

ORIGINAL

FILED ENTERED	RECEIVED SERVED ON COUNSEL/PARTIES OF RECORD
OCT - 8	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

UNITED STATES DISTRICT COURT  
DISTRICT of NEVADA

David Rodrigues,  
Appellant

V.

The State of Nevada,  
Respondents.

Case No. 3:07-CV-00135

RLH-(RAM)

State Court Case No.

CR05P01593

WRIT of HABEAS COCORPUS  
WRIT OF HABEAS CORPUS U.S.C. 2254

Comes now appellant, David Rodrigues, must and again ~~bring~~ <sup>COURT</sup> his Appeal under Habeas Corpus to this <sup>COURT</sup> based on the following facts; on July 24th, 2008, this Court issued an order denying the Appellants Appeal to Reopen (42) and Motion To Reconcider (43) was also denied due to the fact that this Court ruled that Appellant did not exaustall State remedies, therefore Appellant filed a Writ of Habeas Corpus, (Post Conviction) Remedy back on the 24th of April , 2008, (see all copies of filing inclosed herein) and all documents filed there after that is inclosed in order of Appellant filing in writ of Habeas Corpus, and Motion for appointment of council, that was never granted by the Washoe County District Court, instead of ~~ruling~~ ruling on the issue of violation of Appellants Constitutional Rights at pretrial, trial, and sentencing as well, the Court went along with the District Attorney's Motion to dismiss on the grounds that I was untimely in my filing in the United

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1 States District Court was infact timely, (see inclosed copy  
2 of all my filings in the Nevada State Courts), and in this  
3 Honorable Court as well, all were filed timely, therefore the  
4 Appellant must bring in the facts of this case that have been  
5 established by this Court on this Courts Order dated the 31st  
6 day of July, 2007, as follows as stated by this Court, each  
7 ground for relief has several claims, in Ground (1):(A), the  
8 psycologist who conducted the "psycosexual Evaluation" of the  
9 Petitioner required by Nevada Revised Statute, 176.139, did  
10 not interview Petitioner, (B), the sentence of life in prison  
11 with the possibility of parole after (10) years, is effectively,  
12 a death sentence, because the Petitioner is (78) years of age,  
13 (C), Petitioner, who represented himself at trial, went to  
14 trial without an alibi witness, Ground (2) has two components  
15 (A), The Nevada Supreme Court, after appointing coustil to  
16 represent Petitioner on Direct Appeal, violated Petitioner's  
17 Right to petition for Redress of Grievance by rejecting his  
18 Pro-Se briefs (B), Appellants Counsel provided ineffective  
19 assistance when he failed to address the one issue that would  
20 have resulted in the reversal of the Judgement of conviction.  
21 Before a Federal Court may consider a Petition For a Writ of  
22 Habeas Corpus, the Petitioner must exhaust the remebies available  
23 in State Court, 28 U.S.C.A. § 2254 (B), to exhaust a Ground for  
24 Relief, Petitioner must fairly present the ground to the States  
25 highest Court, declining the operative facts and legal theory,  
26 and give that Court the oppotunity to address and resolve the  
27 Ground, see Duncan V. Henry, 513 U.S. 4, 6 (1982). All of the  
28 facts of the violations in this case have been presented to

1 the sentencing Court and the Supreme Court for the State of  
2 Nevada, and the Nevada District Court and the Supreme Court  
3 as well, did rule that Petitioner did not file timely and denied  
4 Appellants Appeal on those Grounds, therefore violating ~~and~~  
5 all of the Appellants Constitutional Rights, see the attached  
6 copies of the State Court, and Supreme Court as well denying  
7 Appellants Motion, under Post Conviction, Habeas Corpus, there-  
8 for leaving Appellant without any other recourse but to bring  
9 this appeal under Habeas Corpus U.S.C. 2254, Back to this Court,  
10 records of all filings are hereby inclosed for this Honorable  
11 Courts review and a list of all filings of which were all  
12 timely, therefore this Honoable Court must issue an order for  
13 what this Court feels is fair and proper.

14  
15 Respectfully Submitted By;

16 David Rodriguez

17 David Rodriguez #89491  
18 P.O. Box 7000  
N.N.C.C.  
Carson City, Nevada 89702

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**DECLARATION UNDER PENALTY of PERJURY**

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.**

See U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at Northern Nevada Correctional Center, Carson City, Nevada October 6th, 2008.

David Rodriguez

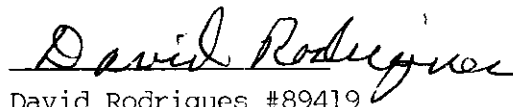
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CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5(B), I hereby Certify that I am the Petitioner named herein and that on this 6th day of October 2008, I deposited in the United States Mails in Carson City, Nevada a true and correct copy of the foregoing addressed to:

Cathrine Cortez Masto,  
Attorney General For,  
The State of Nevada  
100 No. Carson Street  
Carson City, Nevada, 89701-4717

Clerk of The U.S. District Court,  
District of Nevada  
400 South Virginia Street, Room 301  
Reno, Nevada 89501



David Rodrigues #89419  
P.O. Box 7000  
N.N.C.C.  
Carson City, Nevada 89702

David Rodrigues  
89491  
P.O. Box 7000  
N.N.C.C.  
Carson City, Nevada 89702

IN THE SECOND JUDICIAL COURT  
of THE STATE of NEVADA IN AND FOR THE  
COUNTY of WASHOE

David Rodrigues,  
Petitioner,  
V.  
The State of Nevada,  
Respondants.

Case No. ~~07-01423~~ CR05P01593  
Dept. 10

NOTICE of APPEAL

Comes now time the Petitioner must give this Court matter that he shall into the United States District Court, District of Nevada, of order issued by this Court on September 23rd, 2008, denying petition, Writ of Habeas Corpus, that was filed into this Honorable Court, as was ordered by the United States District Court of Reno to exhaust all State remedies, this having been done, therefore leaving Petitioner no other remedy but to bring this matter before the United States District Court, District of Nevada, for all of the violations of the petitioners Constitutional Rights that have been inflicted by this Court, you and each of you shall take notice that Petitioner shall appeal this above CAPTIONED Case into the UNITED STATES DISTRICT COURT, District of Nevada of all the issues of violation, that this was and is still being inflicted by this Court of Petitioners Constitutional Rights,.

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Respectfully Submitted By;

*David Rodriguez*

David Rodriguez

P.O. Box 7000

N.N.C.C.

Carson City Nevada 89702


7-A

**VERIFICATION OF Service**

I, David Rodrigues, have this date of September 29th, 2008, did serve a true and correct copy of this NOTICE of APPEAL upon the following:

Washoe County District Attorney,  
75 Court Street  
Reno, Nevada 89501

Attorney General For The State of Nevada,  
Cathrine Cortez Mastro  
201 South Carson Street, Suite 201  
Carson City, Nevada 89701-4702

  
David Rodrigues 89401  
P.O. Box 7000  
N.NC.C.  
Carson City, Nevada 89702

*Copy sent to*  
*Clerk Washoe County District Court*  
*75 Court St*  
*Reno, NV 89501*

*D.R.*



7-B

CODE: 2922

FILED

SEP 23 2008

HOWARD W. CONYERS, CLERK  
By: *Howard*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*

DAVID RODRIGUES,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO: CR05P01593

DEPT. NO.: 10

**ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**  
**(POST-CONVICTION)**

Mr. David Rodrigues (hereinafter "Petitioner") presents this Court with a *Petition for Writ of Habeas Corpus (Post Conviction)*. This Court, having considered all papers and pleadings on file herein, finds and concludes as follows.

Petitioner was convicted, pursuant to a jury verdict, of one count of lewdness with a child under the age of fourteen (14). Petitioner was then sentenced to a prison term of life with parole eligibility after ten (10) years. The Nevada Supreme Court affirmed the conviction on March 8, 2007, and issued its remittitur on April 4, 2007. Since that time, Petitioner has submitted multiple motions to this Court. On November 30, 2007, Petitioner submitted a Petition for Writ of Habeas Corpus (Post Conviction) which was deemed deficient in both form and substance pursuant to NRS 34.730(2), NRS 34.735, and NRS 34.810(3) – the Petition was denied by this Court on January 14, 2008. Petitioner has

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1 since filed a notice of appeal on March 4, 2008 and has filed an "amended" habeas petition  
2 on April 29, 2008, alleging two grounds for relief.

3 Petitioner correctly asserts that the District Attorney was ordered to respond to  
4 Petitioner's Writ within forty-five (45) days of May 20, 2008, and that the District Attorney  
5 filed their motion outside said forty-five day window (motion filed July 7, 2008; forty-nine  
6 days after the initial Order). However, a delay in filing by the District Attorney's office does  
7 not excuse Petitioner from the provisions of NRS 34.726(1). NRS 34.726(1) states that  
8 unless a Petitioner can show good cause, Petitioner has within one (1) year from the date  
9 the Supreme Court issues its remittitur to file a Petition for Writ of Habeas Corpus. The  
10 Nevada Supreme Court issued its remittitur on April 4, 2007; Petitioner's "amended"  
11 Petition for Writ of Habeas Corpus was filed on April 29, 2008, twenty-five (25) days after  
12 the requisite filing window had closed. The Petitioner, in Question 19 of the April 29, 2008,  
13 "amended" Petition for Writ of Habeas Corpus, even makes note of the fact that the  
14 "amended" petition was filed more than one (1) year following the filing of the decision of  
15 the Supreme Court. ("amended" Petition for Writ of Habeas Corpus, p. 7, 1-19, April 29,  
16 2008). As such, for the Court to excuse the lack of timeliness of the Petitioner's Writ, there  
17 must be a showing of good cause.

18 NRS 34.726(1)(a) and (b) state that good cause for delay exists if Petitioner  
19 demonstrates to the satisfaction of the Court that the delay is not the fault of the  
20 Petitioner; and that dismissal of the petition as untimely would unduly prejudice the  
21 Petitioner. Petitioner has failed to demonstrate to the satisfaction of the Court that the  
22 delay in filing was not the fault of the Petitioner.

23 Even assuming Petitioner successfully demonstrated that the delay in filing was not  
24 the Petitioner's fault, Petitioner fails to demonstrate he would be unduly prejudiced should  
25 the petition be dismissed as untimely. In Ground One, Petitioner argues he was denied the  
26 effective assistance of counsel. This claim contains numerous allegations, all of which lack  
27 merit. Claims of ineffective assistance of counsel are reviewed under a two-pronged test  
28 articulated in Strickland v. Washington, 466 U.S. 668, 687 (1984). First, an individual must

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1 establish that his former counsel's performance was deficient, which the United States  
2 Supreme Court characterized as falling below an "objective standard of reasonableness."  
3 Id. at 688. Second, the individual must show that he was prejudiced by this deficient  
4 performance, so that "but for counsel's unprofessional errors, the result of the proceeding  
5 would have been different." Id. at 694. It is important to note that the Court affords  
6 attorneys great deference in their decisions regarding a client's dispute. In Strickland the  
7 court states, "Judicial review of a lawyer's representation is highly deferential, and a  
8 claimant must overcome the presumption that a challenged action might be considered  
9 sound strategy." Id. at 689.

10 Petitioner initially contends his appellate counsel was ineffective by failing to argue  
11 on direct appeal that the Court erred in denying Petitioner's motion for the appointment of  
12 a new psychologist. Petitioner asserts that the psychologist was prejudiced and unable to  
13 render a just evaluation. Petitioner fails to provide any reasons as to why he was  
14 prejudiced in this regard. Petitioner merely reiterates that the psychologist was prejudiced  
15 and unable to render a just evaluation but fails to articulate any factual underpinnings as to  
16 how the psychologist at issue prejudiced Petitioner.

17 Petitioner next contends that appellate counsel should have argued on appeal that  
18 the Court abused its discretion in denying Petitioner's motion to produce a witness. The  
19 Nevada Supreme Court has stated that "a defendant seeking post-conviction relief must  
20 raise more than conclusory claims for relief; a defendant must support any claims with  
21 specific factual allegations that if true would entitle him or her to relief." Pangallo v. State,  
22 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996) (citing Hargrove v. State, 100 Nev. 498,  
23 502, 686 P.2d 222, 225 (1984)). Here, Petitioner states that the witness at issue was  
24 "crucial" yet fails to articulate any further reason as to why this witness was indeed  
25 "crucial." ("amended" Petition for Writ of Habeas Corpus, p. 10, 1-19, April 29, 2008).  
26 Petitioner's assertion amounts to a conclusory statement which is unsupported by any  
27 specific factual allegations and, as a result, is without merit.

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1 Petitioner next asserts that counsel on appeal should have argued that the Court  
2 abused its discretion by denying his motion for acquittal based on insufficient evidence. In  
3 Pagnallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996), the Court stated that  
4 the defendant is not entitled to an evidentiary hearing if the factual allegations are belied  
5 or repelled by the record. Such is the situation here. The record indicates that Petitioner's  
6 counsel indeed argued there was insufficient evidence to sustain the conviction as indicated  
7 in the Order of Affirmance issued by the Nevada State Court. Order of Affirmance, No.  
8 46745 (March 8, 2007).

9 Accordingly, Petitioner's first ground for relief lacks merit. The Court will now direct  
10 its attention to Petitioner's second ground for relief.

11 In Ground Two, Petitioner asserts that the examining psychologist's report was an  
12 inaccurate evaluation from which the Court could not make a proper determination  
13 concerning Petitioner's qualification for sex offender treatment and rehabilitation.

14 As discussed above, Petitioner must make a showing of good cause in order for the  
15 Court to excuse the lack of timeliness of the Petitioner's writ. NRS 34.726(1)(a) and (b)  
16 state that good cause for delay exists if Petitioner demonstrates to the satisfaction of the  
17 Court that the delay is not the fault of the Petitioner; and that dismissal of the petition as  
18 untimely would unduly prejudice the Petitioner. Petitioner has failed to demonstrate to the  
19 satisfaction of the Court that the delay in filing was not the fault of the Petitioner.

20 Even assuming Petitioner successfully demonstrated that the delay in filing was not  
21 the Petitioner's fault, Petitioner fails to demonstrate that he would be unduly prejudiced  
22 should the petition be dismissed as untimely. NRS 34.810(1)(b)(2) provides that a petition  
23 shall be dismissed where a petitioner's conviction was the result of a jury trial and the  
24 grounds for the petition could have been raised in a direct appeal or prior petition for  
25 habeas corpus. Following a jury trial whereby the jury found Petitioner guilty of the  
26 offense charged, Petitioner failed to raise the issue of the accuracy of the psychologist's  
27 report.

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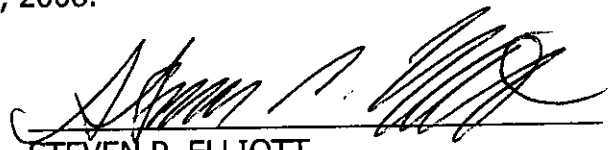
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1 Therefore, due to the aforementioned reasons, Petitioner's second ground for relief  
2 lacks merit.

3 Petitioner is not entitled to any relief based on the allegations he has presented.  
4 Therefore, the Court will deny his Petition for Writ of Habeas Corpus (Post-Conviction).

5 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Petitioner's *Petition for Writ*  
6 *of Habeas Corpus (Post-Conviction)* is **DENIED**.

7  
8 **DATED** this 23 day of September, 2008.

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11 STEVEN P. ELLIOTT  
12 District Judge  
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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe and that on this date I deposited for mailing a copy of the foregoing document addressed to:

David Rodrigues #89491  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

Washoe County District Attorney  
Appellate Division  
P. O. Box 30083  
Reno, NV 89520  
(Interoffice Mail)

**DATED** this 23 day of September, 2008.

  
HEIDI HOWDEN  
Judicial Assistant

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID RODRIGUES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51224

**FILED**


MAR 31 2008

THOMAS K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

Having reviewed the documents on file in this proper person appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 90 days from the date of this order within which to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2) (the complete record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court, as well as any previously prepared transcripts of the district court proceedings).<sup>1</sup>

It is so ORDERED.

 C.J.

<sup>1</sup>The record shall not include any physical, non-documentary exhibits or the original documentary exhibits filed in the district court, but copies of documentary exhibits submitted in the district court proceedings shall be transmitted as part of the record on appeal. The record shall also include any presentence investigation reports submitted in this matter. The clerk of the district court shall transmit the reports to this court in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

cc: David Rodrigues ✓  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk



15  
IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID RODRIGUES,  
Petitioner,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50935

**FILED**

APR 08 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING MOTIONS

On February 21, 2008, this court denied a proper person petition for extraordinary relief. On March 7, 2008, this court received a proper person motion to submit, and on March 18, 2008, this court received a motion to reconsider. No good cause appearing, this court denies the motions.<sup>1</sup> This matter has been closed, and the clerk of this court is directed to return un-filed any further correspondence from petitioner in this matter.

It is so ORDERED.

1. Lantieri A.C.J.

cc: Hon. Steven P. Elliott, District Judge  
David Rodrigues  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

<sup>1</sup>Notably, appellant's request for reconsideration is untimely. See NRAP 40.

## Nevada Supreme Court Docket Sheet

**Docket: 50935 RODRIGUES (DAVID) VS. STATE****Page 1**

DAVID RODRIGUES,  
Petitioner,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 50935**

Consolidated with:

### Counsel

David Rodrigues #89491, Carson City, NV, Petitioner, in proper person  
Attorney General Catherine Cortez Masto/Carson City, Carson City, NV, as counsel for Respondent  
Washoe County District Attorney Richard A. Gammick, Reno, NV, as counsel for Respondent

### Case Information

**Panel:** SNP08 **Panel Members:** Hardesty/Parraguirre/Douglas  
**Disqualifications:**  
**Case Status:** Closed **Category:** Original Proceeding **Type:** Proper Person Writ Petition  
**Submitted:** **Date Submitted:**  
**Oral Argument:**  
**Sett. Notice Issued:** **Sett. Judge:** **Sett. Status:**  
**Related Supreme Court Cases:** 49981

### District Court Case Information

**Case Number:** CR0501593  
**Case Title:** STATE VS. RODRIGUES  
**Judicial District:** Second **Division:** **County:** Washoe Co.  
**Sitting Judge:** Steven P. Elliott  
**Replaced By:**  
**Notice of Appeal Filed:** **Judgment Appealed From Filed:**

### Docket Entries

<b>Date</b>	<b>Docket Entries</b>	
01/22/08	Filing Fee Waived: Criminal.	
01/22/08	Filed Proper Person Petition for Writ. Motion for Post Conviction Remedy, under Writ of Habeas Corpus.	08-01642
02/12/08	Received Proper Person Motion. Motion to Submit.	08-03428
02/21/08	Filed Order Denying Petition "ORDER the petition DENIED." SNP08-JH/RP/MD.	08-04193
03/07/08	Received Proper Person Motion. Motion to Submit.	08-05830
03/18/08	Issued Notice in Lieu of Remittitur.	08-05060
03/18/08	Processing status update: Notice in Lieu of Remittitur Issued/Case Closed.	
03/18/08	Received Proper Person Motion. Motion to Reconsider.	08-06772
04/08/08	Filed Order Denying Motions. No good cause appearing, this court denies the motions. This matter has been closed, and the clerk of this court is directed to return un-filed any further correspondence from petitioner in this matter.	08-08696

Copy

Case No. CR05P1593  
 Dept. No. 10

IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
 STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

<u>DAVID RODRIGUES</u>	)	
	)	AMENDED
Petitioner,	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS
v.	)	(Post-conviction)
	)	(NRS 34.720 et seq.)
<u>THE STATE OF NEVADA</u>	)	
Respondent.	)	
	)	

**INSTRUCTIONS:**

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

19  
PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

Northern Nevada Corr. Center

2. Name and location of court which entered the judgment of conviction under attack:

Second Judicial District court

3. Date of judgment or conviction: January 26, 2006

4. Case Number: CR05P1593

5. (a) Length of sentence:

Life With Possibility of Parole after 10 years.

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion: No.

7. Nature of offense involved in conviction being challenged:

Lewdness With a Minor under age 14 years

8. What was your plea? (check one):

(a) Not guilty XXX

(b) Guilty       

(c) Nolo contendere

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9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea was negotiated, give details:

N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

- (a) Jury XXX  
 (b) Judge without a jury \_\_\_\_\_

11. Did you testify at the trial? Yes

12. Did you appeal from the judgment of conviction? Yes

13. If you did appeal, answer the following:

- (a) Name of court: Nevada Supreme Court  
 (b) Case number or citation: 51328  
 (c) Result: \_\_\_\_\_

Conviction Affirmed

14. If you did not appeal, explain briefly why you did not:

N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? N/A

16. If your answer to No. 15 was "yes," give the following information:

- (a) (1) Name of court: N/A  
 (2) Nature of proceeding: \_\_\_\_\_  
 (3) Grounds raised: \_\_\_\_\_

N/A

- (4) Did you receive an evidentiary hearing on your petition, application or motion? N/A.
- (5) Result: N/A.
- (6) Date of result: N/A.
- (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
- N/A

(b) As to any second petition, application or motion, give the same information:

- (1) Name of court: N/A.
- (2) Nature of proceeding: \_\_\_\_\_.
- (3) Grounds raised: \_\_\_\_\_
- N/A

- (4) Did you receive an evidentiary hearing on your petition, application or motion? N/A.
- (5) Result: \_\_\_\_\_.
- (6) Date of Result: \_\_\_\_\_.
- (7) If known, citations or written opinion or date of orders entered pursuant to such result:
- N/A

(c) As to any third or subsequent additional applications or motions, give the same information:

- (1) Name of court: N/A.
- (2) Nature of proceeding: \_\_\_\_\_.
- (3) Grounds raised: \_\_\_\_\_
- N/A

- (4) Did you receive an evidentiary hearing on your petition, application or motion? N/A.
- (5) Result: \_\_\_\_\_.
- (6) Date of Result: N/A.
- (7) If known, citations or written opinion or date of orders entered pursuant to such result:
- N/A

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

- (1) First petition, application or motion? N/A  
Citation or date of decision: \_\_\_\_\_
- (2) Second petition, application or motion? \_\_\_\_\_  
Citation or date of decision: \_\_\_\_\_
- (3) Third or subsequent petitions, applications or motions: \_\_\_\_\_  
Citation or date of decision: \_\_\_\_\_

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same:

N/A

(b) The proceedings in which these grounds were raised:

N/A

(c) Briefly explain why you are again raising these grounds:

N/A



N/A

N/A

Public Defender on Direct Appeal

22. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

(a) Ground one:

Supporting Facts:

APPELLATE COUNSEL WAS INEFFECTIVE IN FAILING TO  
RAISE VIABLE CLAIMS FOR REVIEW ON DIRECT APPEAL  
IN VIOLATION OF PETITIONER'S SIXTH AND FOURTEENTH  
AMENDMENT RIGHT UNDER THE NEVADA AND U.S CONST.

In the instant, Petitioner asserts his appellate counsel was ineffective in failing to raise viable claims for review on direct appeal, specifically, the pretrial motions filed before the district court. The pretrial motions filed by Petitioner were directly linked to challenging the State's case and in preparation for an adequate defense.

The constitutional right to effective assistance of counsel extends to a direct appeal. Kirksey V. State, 923 P.2d 1102 (Nev. 1996); Burke V. State, 887 P.2d 267, 268 (Nev. 1994). A claim of ineffective assistance of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in the U.S. Supreme Court decision of Strickland V. Washington, 104 S.ct. 2052 (1984). An attorney's decision not to raise meritless issues on appeal is not ineffective assistance of counsel. Leaks V. U.S., 841 F.Supp 536 (S.D.N.Y. 1994).

To establish prejudice based upon the deficient performance and assistance of appellate counsel, the defendant must show that the omitted issue(s) would have a reasonable probability of success on appeal. Firestone V. State, 83 P.3d 279 (Nev. 2004); Kirksey V. State, 923 P.2d 1102 (Nev. 1996); Duhamel V. Collins, 955 F.2d 962 (5th Cir. 1992). In making this determination, a court must review the omitted issues/claims. Heath V. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991); Firestone V. State, 83 P.3d 279 (Nev. 2004).

With this principle in mind of the court having to address the omitted claims in order to reach a factual determination of ineffective assistance of appellate counsel, this Court is obligated to review Petitioner's claims of the direct court abusing its discretion in denying Petitioner's pretrial motions.

#### MOTION FOR APPOINTMENT OF NEW PSYCHOLOGIST

Petitioner asserts the district court abused its discretion in denying his Motion For Appointment of New Psychologist.

Petitioner filed his motion on December 6, 2005 claiming that the evaluator assigned to him by the Department of Parole and Probation is "prejudiced and cannot render a just evaluation." Consequently, the district court denied the motion on the grounds that he did not cite authority for his assertion of being entitled to pick his own evaluator and failed to assert allegations as to why and how the assigned evaluator cannot render a fair opinion.

First, Petitioner was proceeding in proper person and was limited in his access to legal material while housed in the County Jail. Secondly, Petitioner was appointed co-counsel who should have supplemented the motion with the appropriate case law authority and reasoning for the need for a new psychologist to conduct an adequate evaluation.

Without question, as Petitioner filed a timely motion which the court denied, the issue was properly preserved for appellate review and appellate counsel was obligated to raise the claim on direct appeal for review under an abuse of discretion. When considering the circumstances, Appellate counsel was ineffective in failing to raise the district court's denial of Petitioner's Motion For Appointment of New Psychologist.

#### MOTION TO PRODUCE WITNESS

Petitioner asserts the district court abused its discretion in denying his Motion To Produce Witness.

Petitioner filed his motion on December 7, 2005 requesting of the court to order a vital witness, Elaseta Desilva to return from Brazil to testify on his behalf. In the motion, Petitioner was not requesting of the Court's assistance in extraditing this witness from Brazil, Petitioner was merely requesting of additional time to have this witness available who was coming from Brazil.

Petitioner, in his motion for continuance, specifically put this court on notice of the necessity of this crucial witness

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and his inability to properly prepare for trial without vital facts and information from said witness. The District Court Rules, Rule 14(2)(a)(b), provides for the court to grant a continuance based upon the absence of a witness.

In the instant case, the district court failed to inquire into the necessity of Petitioner's witness in the form of asking what this witness' testimony would have amounted to; what this witness could have contributed to the defense and the reasonable unavailability of the witness. Furthermore, at no time did the State lodge a written objection to Petitioner's request for a continuance and for the production of a material witness.

Without question, as Petitioner filed a timely motion which the court denied, the issue was properly preserved for appellate review and appellate counsel was obligated to raise the claim on direct appeal for review under an abuse of discretion. When considering the circumstances, Appellate counsel was ineffective in failing to raise the district court's denial of Petitioner's Motion To Produce Witnesses and Motion For Continuance.

#### MOTION TO DISMISS

Petitioner filed a timely motion to Dismiss Counts II and III of the Criminal Indictment. As Petitioner was proceeding in proper person, the Court should have inquired into the complete facts and circumstances of the motion. Petitioner moved to dismiss Counts II and III, however, there was not Count III of the indictment. This mere fact should have "raised a red flag" to Petitioner's overall competency and the contents of the motion before the court.

28

Had the court conducted a proper inquiry into the actual contents of the motion, the court would have discovered that Petitioner was actually requesting of the court to dismiss Count I, for insufficient evidence. Therefore, Petitioner's motion should have been properly construed as a Motion For Judgment of Acquittal Based Upon Insufficient Evidence pursuant to NRS 175.381(2).

NRS 178.381(2) reads:

2. The court may, on motion of a defendant or on its own motion, which is made after the jury returns a verdict of guilty, set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. The motion for judgment of acquittal must be made within 7 days after the jury is discharged or within such further time as the court may fix during that period.

In the instant case, Petitioner's Motion To Dismiss was in fact filed within seven (7) days after the jury reached a verdict and was discharged. Furthermore, the mere fact that the jury could not reach a decision on Count II and resulted in a hung jury, is the substantial evidence to support Petitioner's motion to dismiss Count I based upon insufficient evidence. When considering the circumstances, as there was no Count III to be dismissed, it's reasonable to reach a positive conclusion that Petitioner was actually requesting of the Court to dismiss Count I of the criminal indictment.

The "insufficiency of the evidence occurs where the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by

28 29  
the jury." See, Evans V. State, 926 P.2d 265, 279 (Nev. 1996)(  
quoting Purcell V. State, 887 P.2d 276, 279 (Nev. 1994).

As Petitioner filed his Motion to Dismiss in a timely manner that the court denied, the issue was properly preserved for appellate review and obligated to raise the claim on direct appeal for review under an abuse of discretion. When considering the circumstances, Appellate counsel was ineffective in failing to raise the district court's denial of Petitioner's Motion To Dismiss.

The prejudicial effects are astronomical and have created an unfair prejudice upon Petitioner. Under the Strickland, test, there exist a reasonable probability that the omitted issues would have succeeded on direct appeal. Counsel's actions, or lack thereof, amount to the irreparable prejudice and comport to nothing more than a clear form of ineffective assistance of counsel upon appeal and extends a "reasonable probability" into a "highly likely probability" that but for counsel's errors, the results of the appeal process would have been extremely different.

Appellate counsel's failure to raise the above-mentioned issues on appeal, ultimately deprived Petitioner of his Sixth and Fourteenth Amendment right to an effective direct appeal. Based upon these errors, Petitioner's conviction must be set aside.

**Relief is warranted..**

30

(b) Ground two:

Supporting Facts:

THE PSYCHOLOGIST WHO CONDUCTED THE PSYCHOSEXUAL  
EVALUATION OF PETITIONER REQUIRED BY NEV. REV.  
STAT. § 176.139 DID NOT INTERVIEW PETITIONER, IN  
VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENT  
TO THE UNITED STATES AND THE NEVADA CONSTITUTION

In the instant case, Petitioner put this Court on notice of the fact of Dr. Nielsen's report regarding the psychosexual evaluation.

NRS 176.139, provides for a Presentence Investigation and report. Psychosexual evaluation of certain sex offenders required standards and methods for conducting evaluations; access to records; rights of confidentiality and privileges deemed waived.

NRS 176.139, provide for the Department of Parole and Probation to conduct a psychosexual evaluation. The person conducting the evaluation must use diagnostic tools that are generally accepted as being within the standard of care for the evaluation which must include "A comprehensive clinical interview with the defendant."

In the instant case, Petitioner advised the Court of his overall disagreement with Dr. Nielsen's line of questioning in conducting the psychosexual evaluation. As the record clearly demonstrates at sentencing, Petitioner stated the following:

THE COURT: Mr. Rodriguez, anything you'd like to say?





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DEFENDANT: Yes, Dr. Nielsen's report, it's not-- it's not accurate. He talked to me for 10 minutes, and I didn't like the questions he was asking me because it didn't pertain to me. There was a not guilty plea entered because I was not guilty. This is--I tried to prove the best I could that this was a conspiracy conspired by Mrs. Rodrigues and her two oldest stepsons that don't live with her.

.... I didn't know what the wife had in mind, she admitted to me she's been having an affair with another man that I don't even know. And that's her concern she don't want me to come out for, because she thinks I'm going to do something. I made divorce papers, I want to separate myself from her, I have--- although the children are not mine, I made a stipulation because of the publication of my book, by the age of 19 I'll open a trust account that each child will not to exceed one million dollars in benefits, and this is what I have, in the divorce papers it's going to come up. And I don't know why she wants me in prison, I have no more to do with this woman...

In the instant case, Dr. Nielsen made a report indicating that Mr. Rodrigues was not a good candidate for sex offender treatment at this time. However, as Petitioner clearly indicated to the court, Dr. Nielsen asked Petitioner questions that were in direct conflict with his innocence and in essence, was attempting to convince Petitioner to admit his guilt to the charged offense. This line of questioning was in conflict with Petitioner's innocence.

32

When considering the totality of the facts and circumstances, the report submitted by Dr. Nielsen was inaccurate and not a true and complete rendition of a psychosexual evaluation for the court to make a factual determination of whether Petitioner actually qualified for sex offender treatment and probation.

Wherefore, the mere fact that Dr. Nielson did not complete a psychosexual evaluation and submit an accurate report, is a violation of Petitioner's Sixth and Fourteenth Amendment to the U.S. and Nevada Constitution and such sentence and conviction must be vacated.

**Relief is warranted...**

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WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at ~~April~~ N.N.C.C., Nevada on the 24<sup>th</sup> day of April, 2008

David Rodriguez  
David Rodrigues, Petitioner

BAC No. 89491  
Address: P.O. BOX 7000  
Carson City, Nev. 89702

34

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

*David Rodriguez*

DAVID RODRIGUES # 89591

35

**CERTIFICATE OF SERVICE BY MAIL**

I, David Rodriques, hereby certify pursuant to N.R.C.P. 5(b), that  
on this 24<sup>th</sup> day of April, 2008 I mailed/handed to a correction officer for mailing a true  
and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed  
to:

N/A

---

**Respondent prison or jail official**

---

**address**

---

N/A

**District Attorney of County of** Washoe  
**Richard Gammick, Esq.**

---

**address**

---

P.O. BOX 30083  
Reno, Nevada 89520

**Attorney General**  
**Heroes' Memorial Building**  
**Capitol Complex**  
**Carson City, Nevada 89710**

  
**Signature of Petitioner**  
**DAVID RODRIGUES #89491**

36

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Writ of Habeas Corpus  
(Post-Conviction)

(Title of Document)

filed in case number: CR05P1593

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 24, 2008

David Rodriguez  
(Signature)

DAVID RODRIGUES  
(Print Name)

N/A  
(Attorney for)

Case No. CR05-1593

Dept. No. 10

.37

Original  
Copy

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

DAVID RODRIGUES,

Plaintiff/Petitioner,

MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS

V.

THE STATE OF NEVADA,

Defendant/Respondent. /

The Petitioner, David Rodrigues

in properia persona, and respectfully moves this Honorable Court,  
purauant to N.R.S. 12.015, for an order granting leave to  
proceed in the above-entitled action in forma pauperis, without  
requiring Petitioner to pay or provide security  
for the payment of costs of prosecuting this action.

This motion is made based upon the attached affidavit of  
David Rodrigues.

Dated this 6th Day of May 2008  
~~19~~.

RESPECTFULLY SUBMITTED,

x David Rodrigues

David Rodrigues# #89491

38

P.O. Box  
Carson City, Nv. 89702  
Petitioner in Proper Person

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

DAVID RODRIGUES

Petitioner,

Vs.

Case No.: CR05-1593

THE STATE OF NEVADA

Dept. No.: 10

Respondent

**AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS**

I, DAVID RODRIGUES, First being duly sworn, depose and say that I am Petitioner in the above-entitled case; that in support of my Motion to proceed without being required to prepay fees, costs or give security therefore; I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I am entitled to relief.

I do xx Do not      request an attorney to be appointed for me.

I further swear that the responses, which I have made to question, and instructions below are true.

1. Are you presently employed: Yes      No xx

A. If the answer is yes, state the amount of your salary or wages per month, and give name and address of your employer.

N/A

B. If the answer is no, state the date of last employment and the amount of salary and wages per month, which you received: 2003



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2. Have you received within the past twelve months any money from any of the following sources? Family

- a. Business, profession or form of self-employment? Yes \_\_\_ No xx  
b. Rent payments, interest or dividends? Yes \_\_\_ No xx  
c. Pensions, annuities or life insurance payments? Yes \_\_\_ No xx  
d. Gifts or inheritances? Yes \_\_\_ No xx  
e. Any other sources? Yes \_\_\_ No xx

If the answer to any of the above is "YES" describe each source of money and state the amount received from each during the past twelve months:

Money from family

3. Do you own cash or equivalent prison currency, or do you have money in a checking or savings account? Yes xx No \_\_\_

If the answer is "YES" state the total value of the items owned: \$200.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuables property (excluding ordinary household furnishing and clothing)? Yes \_\_\_ No xx

If your answer is "YES: describe the property and state its approximate value:

N/A

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support:

N/A

UNDER THE PENALTY OF PERJURY, Pursuant to NRS 208.165 the above affidavit is true and correct to the best of my personal knowledge.

DATED this 6th day of May, 2008.

*David Rodriguez*  
Sign Your Name Here

Print Your Name Here DOC#

**FINANCIAL CERTIFICATE**

I hereby certify that the Petitioner/Plaintiff, David Rodriguez # 89491

has the sum of \$ 64.77 on his account to his credit at the Northern Nevada  
Correctional Center where he is confined.

I further certify that the Petitioner/Plaintiff likewise has the following securities to his credit  
according to the records of said institution: \$ 200.00 in savings

Dated this 25th day of April 2008

Attom

Custody of Records  
Nevada Department of Correction  
Inmate Services Accounting  
Post Office Box 7011  
Carson City, Nevada 89702

41

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Forma Pauperis  
(Title of Document)

filed in District Court Case No. C205-1593

☒ Does not contain the social security number of any person.

**-OR-**

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

**-OR-**

B. For the administration of a public program or  
for an application for a federal or state grant.

\_\_\_\_\_

David Rodriguez  
(Signature)

5/6/08  
(Date)

Copy

David Rodrigues

#89491

P.O. BOX 7000

Carson City, Nevada 89702

FILED

2008 MAY 14 PM 1:40

HOWARD A. CONYERS

BY Y. Lloyd

DEPUTY

Proper Person

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

DAVID RODRIGUES,

**Plaintiff,**

**CASE NO:** CR05-1593

**Vs.**

**DEPT NO:** 10

THE STATE OF NEVADA

**Defendant.**

**APPLICATION TO PROCEED IN FORMA PAUPERIS**

**(Filing Fees/Service Only)**

Pursuant to NRS 12.015, and based on the following Affidavit, request permission from this Court to proceed without paying court cost or other cost and fees as provided in NRS 12.015 because I lack sufficient financial ability.

43

AFFIDAVIT

STATE OF NEVADA )  
COUNTY OF WASHOE ) ss:

I, DAVID RODRIGUES, after being duly sworn, deposes and state as follows: I wish to file with this Court the concurrently submitted pleading. I cannot pay the costs of filing because I lack sufficient income, assets or other resources. Including myself, there are 00 adults and 00 children in my household. Their age(s) is/are       ,       ,       , and       .

My total monthly income before taxes is:

From all sources including employment, self-employment, social security, child support, etc.....\$ 00

Any other household income from another member of the household:.....\$ 00

List where you work and your job title: N/A 00

The following represents a list of my assets and their value:

<u>Automobile</u>	<u>Value</u>	<u>Loan Balance</u>
<u>N/A</u>	\$ <u>      </u>	\$ <u>00</u>
<u>Mobile Home, House or Other Real Estate:</u>		
<u>N/A</u>	\$ <u>      </u>	\$ <u>00</u>
<u>Bank Accounts</u>		
<u>N/A</u>	\$ <u>      </u>	\$ <u>00</u>
<u>Other</u>		
<u>N/A</u>	\$ <u>      </u>	\$ <u>00</u>
	\$ <u>      </u>	\$ <u>00</u>

My total monthly expenses are:

Rent or Mortgage.....\$ 00  
 Phone, Gas, Electricity, and Other Utilities.....\$ 00  
 Food.....\$ 00  
 Child Care.....\$ 00  
 Insurance.....\$ 00  
 Medical.....\$ 00  
 Transportation.....\$ 00  
 Other

\_\_\_\_\_ \$ 00  
 (List other expenses)

TOTAL MONTHLY EXPENSES.....\$ 00  
 (From above)

I request the Court hold a hearing on this Application if the Court is inclined to deny same, so that I may testify as to my indigent status.

Other casue for indigent status: I am currently incarcerated  
and have no means of employment to hire counsel

Dated this 13th Day of May, 2008.

David Rodriguez  
 Affiant

SUBSCRIBED and SWORN to before me  
 this \_\_\_\_\_ day of N/A, \_\_\_\_\_.

FILED PURSUANT TO NRS 208.  
 165 UNDER THE PENALTY OF  
 PERJURY

\_\_\_\_\_  
 Notary Public

45

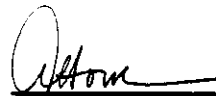
45

**FINANCIAL CERTIFICATE**

I hereby certify that the Petitioner/Plaintiff, David Rodriguez #89491  
has the sum of \$ 64.77 on his account to his credit at the Northern Nevada  
Correctional Center where he is confined.

I further certify that the Petitioner/Plaintiff likewise has the following securities to his credit  
according to the records of said institution: \$ 200.00 in savings

Dated this 25<sup>th</sup> day of April 2008



Custody of Records  
Nevada Department of Correction  
Inmate Services Accounting  
Post Office Box 7011  
Carson City, Nevada 89702

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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Application For Paupers

(Title of Document)

filed in case number: CR05-1593

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 5/13/08

David Rodriguez  
(Signature)

David Rodriguez  
(Print Name)

N/A  
(Attorney for)



Original  
Copy

47

Case No: CR05-1593

Dept No: 10

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

DAVID RODRIGUES, )  
Petitioner)

vs

STATE OF NEVADA, )  
Respondent)

**MOTION FOR APPOINTMENT**  
**OF COUNSEL PURSUANT TO**  
**NRS 34.750**

Petitioner, David Rodrigues, pursuant to NRS 34.750

(1) (2) request the Honorable Court to appoint counsel to represent him in this Habeas Corpus petition for the following reasons:

1. Petitioner is not able to afford counsel, see motion to proceed in Forma Pauperis and Affidavit in support filed with the court.
2. The issues involved in this matter are very complex.
3. The issues involved in this case will require investigation which the petitioner cannot do while confined in prison.
4. Petitioner has very limited knowledge of the law and process thereof.
5. The ends of justice would best be served in this case if an attorney was appointed to represent the petitioner.

Dated this 6th day of May, 2008

/s/ David Rodrigues

Case No: CR05-1593

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CERTIFICATE OF MAILING

I hereby certify that on this 6th day of May,  
2008, I mailed a copy of the foregoing motion to the following  
person:

Richard Gammick, Esq.  
District Attorney  
P.O. BOX 30083  
Reno, Nevada 89520

  
David Rodriguez

49

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion For Counsel

(Title of Document)

filed in District Court Case No. CR05-1593

☒ Does not contain the social security number of any person.

**-OR-**

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

**-OR-**

B. For the administration of a public program or  
for an application for a federal or state grant.

David R. Shigner 5/6/08  
(Signature) (Date)

50

CODE: 2975

FILED

MAY 20 2008

HOWARD W. CONYERS CLERK  
By: *Howard*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*

DAVID RODRIGUES,

Petitioner,

CASE NO: CR05P1593

vs.

DEPT. NO: 10

THE STATE OF NEVADA,

Respondent.

**ORDER**

The record indicates that Petitioner has filed a Petition for Writ of Habeas Corpus (Post-Conviction). The Court has reviewed the Petition, and its supplement, and has determined that a response would assist the Court in determining whether the asserted grounds for relief alleged therein warrant an evidentiary hearing.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of the Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 through 34.830, inclusive.

**DATED** this 20 day of May, 2008.



STEVEN P. ELLIOTT  
District Judge

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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 20 day of May, 2008, I deposited for mailing a copy of the foregoing document addressed to:

Gary Hatlestad  
Deputy District Attorney  
Appellate Division  
**Via Interoffice Mail**

David Rodrigues #89491  
N.N.C.C.  
P.O. Box 7000  
Carson City, NV 89702

**DATED** this 20 day of May, 2008.

  
HEIDI HOWDEN  
Judicial Assistant

~~52~~  
52

COPY

David Rodrigues #89491  
Northern Nevada Corr. Center  
P.O. BOX 7000  
Carson City, Nevada 89702

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

DAVID RODRIGUES,  
Petitioner,

CASE NO: CR05P1593

Vs.

DEPT NO: 10

THE STATE OF NEVADA,  
Respondent.

MOTION FOR LEAVE OF COURT  
TO AMEND WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW, David Rodrigues, Petitioner, in proper person and in accordance with the dictates of Haines V. Kerner, 92 S.ct. 594 at 596, wherein, (Pro Se pleadings are to be held to a less stringent standard than those pleadings drafted by attorneys) and respectfully submits the instant Motion For Leave of Court To Amend Writ of Habeas Corpus (Post-Conviction).

The instant motion is made pursuant to all local rules governing this action as well as all papers, pleadings and information on file with the Clerk of the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Petitioner was convicted pursuant to a jury verdict of one count of Lewdness With a Child Under the age of 14. Petitioner was sentenced to a prison term, of Life with the possibility of Parole after 10 years. A timely notice of appeal was filed and the Nevada Supreme Court affirmed the conviction on March 8, 2007 and issued its remittitur on April 4, 2007.

Pursuant to NRS 34.726, Petitioner had up until and including April 4, 2008 to file a Writ of Habeas Corpus/Post-Conviction petition. On November 30, 2007, Petitioner filed his time Writ of Habeas Corpus/Post-Conviction with the Clerk of the Court. However, because Petitioner did not use the appropriate form under NRS 34.735, on January 14, 2008, the district court declined to consider the petition and subsequently denied the petition on a technical defect without reaching the merits or providing Petitioner the opportunity to cure the defects by way of amending the petition pursuant to the Nevada Supreme Court decision announced in Miles V. State, 91 P.3d 588 (Nev. 2004).

Petitioner respectfully moves this Court for Leave to amend his original timely filed Writ of Habeas Corpus/Post-Conviction pursuant to Miles, 91 P.3d 588 (Nev. 2004).

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LEGAL ARGUMENT

PETITIONER MUST BE ENTITLED TO CURE THE DEFECTS  
AND DEFICIENCIES OF THE ORIGINAL TIMELY FILED  
WRIT OF HABEAS CORPUS (POST-CONVICTION) PETITION  
IN ACCORDANCE WITH EQUAL DUE PROCESS UNDER THE  
FOURTEENTH AMENDMENT TO THE NEVADA AND U.S. CONST.

Petitioner asserts he should have been afforded the opportunity to cure the defects and deficiencies of his original and timely filed writ of habeas corpus (post-conviction) petition prior to the court's decision to decline to consider the petition on the merits.

DEFICIENCIES AND DEFECTS

Petitioner, in proper person and with due diligence, filed a timely writ of habeas corpus (post-conviction) challenging his conviction. However, the petition was not in compliance with the standard form of NRS 34.735 and not properly verified pursuant to NRS 34.730(1).

On January 14, 2008, the district court declined to consider the petition by citing NRS 34.730 and NRS 34.735 based solely on the defects. In declining to consider the petition, the district court did not provide Petitioner with the opportunity or option to cure the defects and deficiencies by amending the petition with the proper form and verification.

In Miles V. State, 91 P.3d 588 (Nev. 2004), the Nevada Supreme Court addressed this very issue and concluded that the trial court could allow defects to be cured by amending the petition. Specifically, when addressing an unverified petition the Nevada Supreme Court went on to state:



"....we have never held that a defective verification deprives the district court of jurisdiction to allow a petitioner to cure that defect."

See, Kilgore V. State, 791 S.W.2d 393, 395 (Mo.1990); Rodden V. State, 795 S.W.2d 393, 395 (Mo. 1990)(noting in a post-conviction habeas case, that "[e]ven an essential element of a pleading, like verification, may be added by amendment").

Furthermore, "the Legislature has not mandated that the district court dismiss an inadequate verified petition, nor has it expressly prohibited a petition from curing technical defects by amendment." Miles, 91 P.3d at 589.

Therefore, the district court should have put Petitioner on notice of the opportunity and option to cure the defects by amendment prior to dismissing an otherwise timely writ of habeas corpus (post-conviction) petition.

#### TIMELINESS OF AMENDED PETITION

Petitioner's original petition was timely filed on November 30, 2007, approximately seven (7) months and sixteen (16) days from the Nevada Supreme Court's affirmance of the direct appeal of March 8, 2007 and issuing of the remittitur on April 4, 2007. However, the district court denied Petitioner's petition on January 14, 2008.

As Petitioner's original petition was timely filed and the district court denied such petition on a technical defect without putting Petitioner on notice of the opportunity and option to cure the defects by amendment prior to dismissing the petition,

Petitioner's amended petition must be deemed timely filed.

In Miles, the Nevada Supreme Court addressed the issue of timeliness and went on to state:

"Once the [district] court acquires jurisdiction by the timely filing of the petition for the writ, any defects in the petition may be cured by amendment, even after the [statutory time limit for filing the petition has] elapsed....."

NRS 34.750(5) (emphasis added)

In the instant case, the district court acquired jurisdiction of the timely filed petition on November 30th, 2007, however, the court summarily declined to consider the petition solely based upon a technical defect which could have been cured by amendment. Therefore, as the original petition was timely filed, Petitioner's amended petition must also be deemed timely filed regardless of regardless of the statutory time constraints.

Furthermore, as recognized by the Court in Miles, "the district court's resolution of claims presented in a timely filed, non-successive post-conviction habeas corpus petition will reduce the likelihood of subsequent post-conviction proceedings." Id. at 590.

#### CONCLUSION

WHEREFORE, based upon the forgoing facts and circumstances, Petitioner must be granted Leave to file his amended Writ of habeas Corpus/Post-Conviction without having to contend with the

the procedural defaults and hurdles set forth in NRS 34.726.  
With good cause appearing, Petitioner respectfully request of  
this Court to grant the instant motion in its entirety and  
permit Petitioner to proceed accordingly.

Dated this 24<sup>th</sup> day of April, 2008

David Rodriguez  
David Rodriguez #89491

CERTIFICATE OF MAILING

I hereby certify that on this 24<sup>th</sup> day of April,  
2008, I mailed a true and correct copy of the foregoing motion  
to the following person(s):

Richard Gammick, Esq.  
District Attorney  
P.O. BOX 30083  
Reno, Nevada 89520-3083

Washoe County Court Clerk  
P.O. BOX 30083  
Reno, Nevada 89520

David Rodriguez  
David Rodriguez #89491

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FILED

2008 JUL 11 PM 4:50

HOWARD W. CONYERS

BY y Lloyd  
DEPUTY

David Rodrigues #89491  
N.N.C.C P.O, Box 7000  
Carson City, Nevada.  
89702

In Pro se

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA FOR THE COUNTY OF WASHOE

DAVID RODRIGUES )  
Petitioner, )  
Vs. )  
THE STATE OF NEVADA )  
Respondant )

Case No. CR05P1593  
Dept. No. 10

**MOTION TO DENY RESPONDENT  
MOTION TO DISMISS BASED  
UPON THE FOLLOWING FACTS  
THAT WAS PRESENTED TIMELY  
IN PETITIONERS WRIT OF  
HABEAS CORPUS (POST  
CONVICTION)**

On the 24th day of April 2008, petitioner filed into this court a petition for writ of habeas corpus (post conviction) on May 20th, 2008 this court issued an order for the State to answer or respond within 45 days from that date of the order, within the provision of N.R.S. 34.360 thru 34. 830,.

The respondent did not respond until July 7th, 2008, 49 days later, therefore did not respond timely,. all of the violations that petitioner out-lined in the writ of habeas corpus (post conviction) was clearly out lined, and it shall show on all the records of the pretrial hearing, the trial, and the sentencing as well.

On the 6th day of May 2008, petitioner did file a Motion for appointment of counsel, pursuant to N.R.S.34.750,. and as of this date that have not yet been ordered by this court,.

Petitioner is in prison and limited to what he can do for himself to respond of all the violations that is a part of

300 59

1 The records, of the pretrial, the trials, and the sentencing  
2 hearing as well as presented in petitioners writ of habeas corpus  
3 the is before this court, the respondent stated in the States  
4 motion to dismiss, that the psychosexual evaluation after  
5 sentence did take place, my motion in this court was very clear  
6 that the petitioner did not let Dr. Nelson evaluate petitioner at  
7 all as the motion filed in this court that is on the record  
8 shall show, what more is needed to get justice from this court,  
9 all the issues that was presented to this court on petitioners  
10 motion for writ of habeas corpus, and post conviction, of  
11 violations did occur and is recorded on the pretrial, trial and  
12 sentencing hearing, as well therefore for all the facts of  
13 violations there is good cause showing, therefore this court,  
14 must deny respondents request to dismiss.

15  
16 Respectfully Submitted,

17 On this 9th, day of July 2008.

18  
19 X David Rodriguez  
20 David Rodriguez # 89491  
21 N.N.C.C. P.O. Box 7000  
22 Carson City, Nevada.  
23 89702  
24  
25  
26  
27  
28

VERIFICATION OF SERVICE

I David Rodrigues, this 9th day of July 2008, did  
serve a true copy of this Motion to the following listed below;

1. The County District Attorney  
75 Court Street  
Reno, Nevada. 80701
2. Attorney General for the State of Nevada  
Heroes Memorial Bulding  
Capital Complex  
Carson City, Nevada. 89710

Executed on this 9th day of July 2008 in Carson  
City, Nevada. 89702.

x David Rodrigues  
David Rodrigues #89491  
N.N.C.C P.O. Box 7000  
Carson City, Nevada.  
89702

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

*Motion to Deny, state motion to  
Dismiss,*

(Title of Document)

filed in case number: *CRO5P1593*



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: *July, 9th, 2008*

*David Rodriguez*  
(Signature)

*DAVID RODRIGUES*  
(Print Name)

*N/A*  
(Attorney for)

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*Filed on the 78 day*

CODE #2300  
RICHARD A. GAMMICK  
#001510  
P. O. Box 30083  
Reno, Nevada 89520-3083  
(775)328-3200  
Attorney for Respondent

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*

DAVID RODRIGUES,

Petitioner,

v.

Case No. CR05P1593

THE STATE OF NEVADA,

Dept. No. 10

Respondent.

MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)

Petitioner was convicted, pursuant to a jury verdict, of one count of lewdness with a child under the age of 14 years. The Nevada Supreme Court affirmed the judgment of conviction on March 8, 2007; and the Court issued its remittitur on April 3, 2007. Petitioner filed what purported to be a post-conviction petition for writ of habeas corpus on November 30, 2007. This court dismissed the petition on January 14, 2008, because it was deficient in form. The court filed a notice of entry of its order on April 4, 2008. Petitioner filed a notice of appeal on March 4, 2008. Petitioner also filed an "amended" habeas petition on April 29, 2008. The State moves this court to dismiss the petition.

Assuming that petitioner's first petition was an actual petition, the second petition is successive, and is therefore procedurally barred, unless petitioner can show good cause and



prejudice. See NRS 34.810(2). If the first pleading was not a petition (since it did not even remotely follow the form required by NRS 34.730(2) ("The petition must be titled 'Petition for Writ of Habeas Corpus (Postconviction)' and be in substantially the form set forth in NRS 34.735[]") and NRS 34.735), it was untimely, and therefore subject to dismissal, unless petitioner shows cause and prejudice. Petitioner shows neither. See NRS 34.735 (requiring petitioner to state reasons for filing an untimely petition in the petition itself).

The court should also dismiss the petition because it fails to state specific facts that demonstrate prejudice, as shown below.

#### Ground One /First Claim

Petitioner first claims that his appellate counsel was ineffective by failing to argue on direct appeal that this court abused its discretion when it denied his motion for the appointment of a new psychologist. Presumably, petitioner refers to the psychologist who interviewed him for the psychosexual evaluation after petitioner was convicted.

"[A] defendant seeking post-conviction relief must raise more than conclusory claims for relief; a defendant must support any claims with specific factual allegations that if true would entitle him or her to relief." *Pangallo v. State*, 12 Nev. 1533, 1536, 930 P.2d 100, 102 (1996); *Nobles v. Warden*, 106 Nev. 67, 787 P.2d 340 (1990) (habeas claim that merely alleged defendant's sentence was based on errors in presentence report properly dismissed where petition failed to specify errors). To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, which resulted in prejudice because the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 923 P.2d 1102, 1114 (1996) (citing *Strickland v. Washington*, 466 U.S. 668, 668 (1984)). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983).

Here, petitioner merely alleges that he had asserted that the psychologist who evaluated

1 him for sentencing purposes was “prejudiced and cannot [sic] render a just evaluation.”  
2 (Petition, 9). Based on this allegation, petitioner explains that this issue was properly  
3 preserved for appellate review, and, as such, appellate counsel should have argued that this  
4 court abused its discretion by not granting the appointment of a new psychologist.

5 Such a conclusory allegation, however, fails to explain why the psychologist was  
6 prejudiced so that this court should not have considered the psychologist’s opinion. Thus,  
7 petitioner fails to show that this court abused its discretion in relying on the psychologist’s  
8 report. Petitioner also fails to show how the appointment of a new psychologist would have  
9 made any difference, i.e., petitioner fails to show he was prejudiced by the psychologist’s  
10 report. In sum, petitioner’s claim would not have led the Nevada Supreme Court to grant  
11 relief. The court should dismiss this claim.

#### 12 Second Claim

13 Petitioner claims his appellate counsel should have argued that this court abused its  
14 discretion by denying his motion to produce witness. Petitioner, however, does not show any  
15 prejudice from the absence of the witness. Accordingly, the court should dismiss the claim.

#### 16 Third Claim

17 Petitioner asserts his appellate counsel should have argued that this court abused its  
18 discretion by denying his motion to dismiss for insufficient evidence. Petitioner argues the  
19 motion should have been construed as a motion for judgment of acquittal based on insufficient  
20 evidence. The record repels this claim: appellate counsel did argue that there was insufficient  
21 evidence to sustain the conviction. See attached Order, *Rodrigues v. State*, Order of  
22 Affirmance, No. 46745 (March 8, 2007). Accordingly, the court should dismiss this claim. See  
23 *Pangallo v. State*, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996) (“the defendant is not entitled  
24 to an evidentiary hearing if the factual allegations are belied or repelled by the record”).

#### 25 Ground Two

26 Here, petitioner asserts he told this court that he disagreed with how the psychologist

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1 interviewed him, specifically, that the psychologist interviewed petitioner with the assumption  
2 that petitioner was guilty. Petitioner claims the psychosexual evaluation was not accurate.  
3 This claim could have been raised on direct appeal. Thus, the court should dismiss it. NRS  
4 34.810(1)(b)(2). Further, a jury had convicted petitioner; thus, he was guilty. Any such  
5 assumption by the psychologist was therefore warranted. Petitioner has failed to set forth a  
6 claim warranting relief.

7 For the foregoing reasons, the State respectfully requests the court to dismiss the  
8 petition.

9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding document does not contain the  
11 social security number of any person.

12 DATED: July 7, 2008.

13 RICHARD A. GAMMICK  
14 District Attorney

15 By

  
16 JOSEPH R. PLATER  
17 Appellate Deputy  
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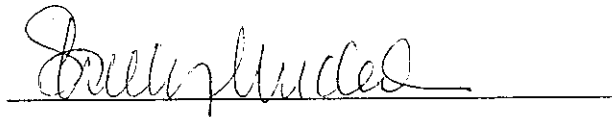
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**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

David Rodrigues #89491  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

DATED: July 7, 2008.



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FILED

2008 JUL 11 PM 4:50

HOWARD W. CONYERS  
Y. LloydBY \_\_\_\_\_  
DEPUTY

David Rodrigues #89491  
N.N.C.C P.O, Box 7000  
Carson City, Nevada.  
89702

In Pro se

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA FOR THE COUNTY OF WASHOE

DAVID RODRIGUES )  
Petitioner, )  
Vs. )  
THE STATE OF NEVADA )  
Respondant )

Case No. CR05P1593  
Dept. No. 10

**MOTION TO DENY RESPONDENT  
MOTION TO DISMISS BASED  
UPON THE FOLLOWING FACTS  
THAT WAS PRESENTED TIMELY  
IN PETITIONERS WRIT OF  
HABEAS CORPUS (POST  
CONVICTION)**

On the 24th day of April 2008, petitioner filed into this court a petition for writ of habeas corpus (post conviction) on May 20th, 2008 this court issued an order for the State to answer or respond within 45 days from that date of the order, within the provision of N.R.S. 34.360 thru 34. 830,.

The respondent did not respond until July 7th, 2008, 49 days later, therefore did not respond timely,. all of the violations that petitioner out-lined in the writ of habeas corpus (post conviction) was clearly out lined, and it shall show on all the records of the pretrial hearing, the trial, and the sentencing as well.

On the 6th day of May 2008, petitioner did file a Motion for appointment of counsel, pursuant to N.R.S.34.750,. and as of this date that have not yet been ordered by this court,.

Petitioner is in prison and limited to what he can do for himself to respond of all the violations that is a part of

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1 The records, of the pretrial, the trials, and the sentencing  
2 hearing as well as presented in petitioners writ of habeas corpus  
3 the is before this court, the respondent stated in the States  
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5 sentence did take place, my motion in this court was very clear  
6 that the petitioner did not let Dr. Nelson evaluate petitioner at  
7 all as the motion filed in this court that is on the record  
8 shall show, what more is needed to get justice from this court,  
9 all the issues that was presented to this court on petitioners  
10 motion for writ of habeas corpus, and post conviction, of  
11 violations did occur and is recorded on the pretrial, trial and  
12 sentencing hearing, as well therefore for all the facts of  
13 violations there is good cause showing, therefore this court,  
14 must deny respondents request to dismiss.

15  
16 Respectfully Submitted,

17 On this 9th, day of July 2008.

18  
19 x David Rodriguez  
20 David Rodriguez # 89491  
21 N.N.C.C. P.O. Box 7000  
22 Carson City, Nevada.  
23 89702  
24  
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27  
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VERIFICATION OF SERVICE

I David Rodrigues, this 9th day of July 2008, did  
serve a true copy of this Motion to the following listed below;

1. The County District Attorney  
75 Court Street  
Reno, Nevada. 80701
2. Attorney General for the State of Nevada  
Heroes Memorial Bulding  
Capital Complex  
Carson City, Nevada. 89710

Executed on this 9th day of July 2008 in Carson  
City, Nevada. 89702.

x David Rodrigues  
David Rodrigues #89791  
N.N.C.C P.O. Box 7000  
Carson City, Nevada.  
89702

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

*Motion to Deny, state motion to  
Dismiss,*

(Title of Document)

filed in case number: *CROSP1593*



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: *July, 9th, 2008*

*David Rodriguez*  
(Signature)

*DAVID RODRIGUES*  
(Print Name)

*N/A*  
(Attorney for)



IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA

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BY McLloyd

David Rodrigous, )  
Appellant, )  
Vs. ) Case No. CR0p1593  
The State of Nevada, et al, )  
Respondents. )

Amended Motion in response to the District Attorney,  
Motion To Dismiss, and amend Motion To Submit.

Comes now time for the Appellant to file this evidence of  
all fillings of Appellants Appeal as of this date; the District  
Attorney in his responses to Appellants Writ of Habeas Corpus  
that was file in this Court and all filings of Appeals into the  
sentencing Court, The Supreme Court of Nevada and the United  
States District Court as well, as the records of filing that is  
submitted herein shall more than show ~~more~~ <sup>OR</sup> show all filing by  
Appellant was in fact all filed timely. Therefor the Motion  
filed in responses by the District Attorney was in fact in error  
and filed untimely as well.

Therefor due to the fact of all the inclosed records of  
filing, this Court is left without any recourse but to grant  
Appellants Motion To Dismiss Count ONE and Count TWO, and to  
release from prison, and all the records of this above case, the  
order should be given, and the records expunged.

72

OR

1 Therefor the Appellant, David Rodrigio<sup>es</sup> request that The  
2 Honorable Court order the Conviction Reversed and the Sentnece  
3 vacated, and all of the legal proceedings from arrest to the  
4 imprisonment be expunged from the record.

5 Respectfully Submitted By;

6 David Rodriguez

7 David Rodrigious

8 P.O. Box 7000

9 N.N.C.C.

10 Carson City, Nevada 89702

11 Dated this 14<sup>th</sup> Day of August, 2008.

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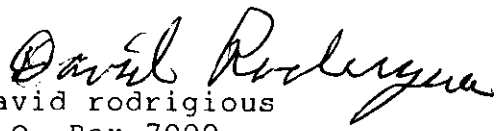
CERTIFICATE OF SERVICE BY MAIL

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Pursuant to N.R. C.P. Rule 5 (b), I hereby certify that I  
am The Appellant named herein and on this \_\_\_\_\_ Day of \_\_\_\_\_,  
2008, I deposited it in the United States Mail in Carson City,  
Nevada A true and copy of the foregoing document addressed to:

Cathrine Cortez Masto  
Attorney General of The State of Nevada  
201 South Carson Street  
Carson City, Nevada 89701

Washoe County District Attorney  
75 Court Street  
Reno, Nevada 89501

  
David rodrigious  
P.O. Box 7000  
N.N.C.C.  
Carson City, Nevada 89702

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# Appeals Report

Case ID	Text IN	Date	Pages	Volume
CR05P1593	AMENDED INFORMATION	11/07/05	184-187	1
CR05P1593	AMENDED MOTION FOR TRANSCRIPTS	10/20/05	109-110	1
CR05P1593	APPLICATION FOR SETTING	09/06/05	34	1
CR05P1593	CASE APPEAL STATEMENT	02/01/06	352-353	2
CR05P1593	CASE APPEAL STATEMENT	02/01/06	354-355	2
CR05P1593	CASE APPEAL STATEMENT	03/04/08	854-855	4
CR05P1593	CASE APPEAL STATEMENT	11/14/05	234-235	1
CR05P1593	CERTIFICATE OF CLERK	02/01/06	350	2
CR05P1593	CERTIFICATE OF CLERK	02/01/06	351	2
CR05P1593	CERTIFICATE OF CLERK	03/04/08	856	4
CR05P1593	CERTIFICATE OF CLERK	11/14/05	237	1
CR05P1593	CERTIFICATE OF CLERK - RECORD ON APPEAL	06/24/08	905	4
CR05P1593	CERTIFICATE OF TRANSMITTAL	02/01/06	348	2

Case ID	Text IN	Date	Pages	Volume
CR05P1593	CERTIFICATE OF TRANSMITTAL	02/01/06	349	2
CR05P1593	CERTIFICATE OF TRANSMITTAL	03/04/08	857	4
CR05P1593	CERTIFICATE OF TRANSMITTAL	11/14/05	236	1
CR05P1593	CERTIFICATE OF TRANSMITTAL - RECORD ON APPEAL	06/24/08	906	4
CR05P1593	COURT SERVICES REPORT	07/20/05	1-2	1
CR05P1593	INFORMATION	07/26/05	4-7	1
CR05P1593	JUDGMENT	01/26/06	339-340	2
CR05P1593	JURY INSTRUCTIONS 1-28	11/09/05	205-233	1
CR05P1593	JURY QUESTION - NO REPSONSE	11/09/05	204	1
CR05P1593	JURY QUESTION - NO RESPONSE	11/08/05	195	1
CR05P1593	MINUTES	06/24/08	END	4
CR05P1593	MOTION FOR APPEAL BOND	01/31/06	345	2
CR05P1593	MOTION FOR APPEAL BOND	08/22/07	798-802	4
CR05P1593	MOTION FOR APPOINTMENT OF COUNSEL	05/14/08	899-901	4
CR05P1593	MOTION FOR APPOINTMENT OF NEW PSYCHOLOGIST	12/06/05	301-302	2
CR05P1593	MOTION FOR CHANGE OF VENUE	09/19/05	45-47	1

Case ID	Text IN	Date	Pages	Volume
CR05P1593	MOTION FOR CONTINUANCE	11/07/05	178-183	1
CR05P1593	MOTION FOR LEAVE OF COURT TO AMEND WRIT OF HABEAS CORPUS (POST-CONVICTION)	04/29/08	870-876	4
CR05P1593	MOTION FOR OWN RECOGNIZANCE RELEASE OR BAIL REDUCTION	09/06/05	35-38	1
CR05P1593	MOTION FOR POST-CONVICTION REMEDY	11/30/07	806-834	4
CR05P1593	MOTION FOR PROPER BAIL HEARING UNDER WRIT OF HABEAS CORPUS	08/18/05	8-12	1
CR05P1593	MOTION FOR PROPER MEDICAL TREATMENT	08/18/05	17-21	1
CR05P1593	MOTION FOR RELEASE ON O.R	01/04/06	326-328	2
CR05P1593	MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE	03/17/06	402-404	2
CR05P1593	MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE	09/19/05	48	1
CR05P1593	MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE	11/29/05	290-293	2
CR05P1593	MOTION OF INQUIRY	12/18/07	841-843	4
CR05P1593	MOTION RE; SENTENCE	11/16/05	246-252	1
CR05P1593	MOTION TO AMEND APPEAL SENT TO THE COURT	10/20/05	106-108	1
CR05P1593	MOTION TO APPOINT NEW PSYCHOLOGIST	12/06/05	300	2
CR05P1593	MOTION TO ARREST THE SENTENCE	01/31/06	341-343	2
CR05P1593	MOTION TO BE ALLOWED TO APPEAL	11/07/05	174-177	1

Case ID	Text IN	Date	Pages	Volume
CR05P1593	MOTION TO CORRECT STATE ERROR IN MOTION TO DISMISS AND RESPOND	12/27/05	316-318	2
CR05P1593	MOTION TO DISMISS COUNTS II AND III	12/15/05	308-309	2
CR05P1593	MOTION TO DISMISS OR MOTION TO RECONSIDER O.R.	10/25/05	115-116	1
CR05P1593	MOTION TO PRODUCE WITNESSES	12/07/05	303-305	2
CR05P1593	MOTION TO RECONSIDER MOTION FOR PROPER MEDICAL TREATMENT	11/17/05	254-255	2
CR05P1593	MOTION TO SUPPRESS	10/25/05	111-114	1
CR05P1593	MOTION TO VACATE OR SET ASIDE THE SENTENCE OF THE COURT	02/22/06	357-374	2
CR05P1593	NOTICE OF APPEAL	01/31/06	344	2
CR05P1593	NOTICE OF APPEAL	02/01/06	346-347	2
CR05P1593	NOTICE OF APPEAL	03/04/08	850-853	4
CR05P1593	NOTICE OF APPEAL	11/04/05	173	1
CR05P1593	NOTICE OF APPEAL	11/07/05	188-189	1
CR05P1593	NOTICE OF APPEAL	11/09/05	196-197	1
CR05P1593	NOTICE OF ENTRY OF ORDER	04/04/08	864-867	4
CR05P1593	NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND THE INFORMATION	11/07/05	190-194	1
CR05P1593	NOTICE OF STATE'S WITNESSES TO BE CALLED IN STATE'S CASE IN CHIEF	10/27/05	154-156	1

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Case ID	Text IN	Date	Pages	Volume
CR05P1593	ORDER	01/14/08	844-846	4
CR05P1593	ORDER	03/03/06	399-401	2
CR05P1593	ORDER	05/20/08	902-903	4
CR05P1593	ORDER APPOINTING COUNSEL	03/01/06	397-398	2
CR05P1593	ORDER DENYING MOTION FOR RELEASE ON O.R.	01/20/06	337-338	2
CR05P1593	ORDER DENYING MOTION TO DISMISS	01/20/06	333-336	2
CR05P1593	ORDER DENYING TRIAL TRANSCRIPTS AT PUBLIC EXPENSE	01/20/06	331-332	2
CR05P1593	ORDER FOR CONTINUANCE	11/30/05	294-295	2
CR05P1593	ORDER FOR TRANSCRIPTS AT PUBLIC EXPENSE	03/30/06	406-407	2
CR05P1593	PETITION FOR WRIT OF HABEAS CORPUS - AMENDED	04/29/08	877-896	4
CR05P1593	PETITIONER'S REPLY TO RESPONDENTS MOTION TO APPEAL BOND PENDING APPEAL	05/08/06	782-784	4
CR05P1593	PROOF OF SERVICE	09/28/05	50	1
CR05P1593	REQUEST FOR SUBMISSION	01/11/06	329-330	2
CR05P1593	REQUEST FOR SUBMISSION	08/30/05	32-33	1
CR05P1593	REQUEST FOR SUBMISSION	09/28/05	49	1
CR05P1593	REQUEST FOR SUBMISSION	11/04/05	171-172	1



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Case ID	Text IN	Date	Pages	Volume
CR05P1593	REQUEST FOR SUBMISSION	12/13/05	306-307	2
CR05P1593	REQUEST FOR SUBMISSION	12/13/07	835-840	4
CR05P1593	REQUEST, AGREEMENT AND ORDER FOR PRE-TRIAL RECIPROCAL DISCOVERY	11/15/05	243-245	1
CR05P1593	STATE'S NOTICE OF EXPERT WITNESS TO BE CALLED IN STATE'S CASE IN CHIEF	10/18/05	51-73	1
CR05P1593	STATE'S NOTICE OF INTENT TO PRESENT CHILD HEARSAY IN STATE'S CASE IN CHIEF	10/27/05	117-120	1
CR05P1593	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR RELEASE ON OWN RECOGNIZANCE OR FOR BAIL REDUCTION	09/14/05	39-44	1
CR05P1593	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS ONE AND TWO	12/21/05	310-314	2
CR05P1593	STATE'S REPLY IN OPPOSITION FOR DEFENDANT'S MOTION FOR BAIL PENDING APPEAL	04/27/06	774-781	4
CR05P1593	STATE'S REPLY TO DEFENDANT'S MOTION TO DISMISS OR MOTION TO RECONSIDER O.R.	11/02/05	157-162	1
CR05P1593	STATE'S REPLY TO DEFENDANT'S MOTION TO SUPPRESS	11/02/05	163-170	1
CR05P1593	STIPULATION FOR CONTINUANCE	11/18/05	256-257	2
CR05P1593	SUPREME COURT CLERK'S CERTIFICATE	04/04/07	792	4
CR05P1593	SUPREME COURT NOTICE IN LIEU OF REMITTITUR	03/21/08	860	4
CR05P1593	SUPREME COURT NOTICE IN LIEU OF REMITTITUR	05/27/08	904	4
CR05P1593	SUPREME COURT NOTICE IN LIEU OF REMITTITUR	10/05/07	805	4
CR05P1593	SUPREME COURT NOTICE IN LIEU OF REMITTITUR	12/05/05	299	2

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Case ID	Text IN	Date	Pages	Volume
CR05P1593	SUPREME COURT ORDER	09/22/06	785-786	4
CR05P1593	SUPREME COURT ORDER DENYING MOTION	03/20/06	405	2
CR05P1593	SUPREME COURT ORDER DENYING MOTIONS	04/10/08	869	4
CR05P1593	SUPREME COURT ORDER DENYING PETITION	02/26/08	848-849	4
CR05P1593	SUPREME COURT ORDER DENYING PETITION	05/05/08	897-898	4
CR05P1593	SUPREME COURT ORDER DENYING PETITION	09/06/07	803-804	4
CR05P1593	SUPREME COURT ORDER DENYING PETITION	11/09/05	202	1
CR05P1593	SUPREME COURT ORDER DENYING RELIEF	11/30/05	298	2
CR05P1593	SUPREME COURT ORDER DENYING RELIEF	12/23/05	315	2
CR05P1593	SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD	04/02/08	862-863	4
CR05P1593	SUPREME COURT ORDER OF AFFIRMANCE	03/12/07	787-790	4
CR05P1593	SUPREME COURT ORDER OF AFFIRMANCE	04/04/07	793-797	4
CR05P1593	SUPREME COURT ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL	02/27/06	395-396	2
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	02/09/06	356	2
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	02/14/08	847	4
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	03/11/08	858	4

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Case ID	Text IN	Date	Pages	Volume
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	03/11/08	859	4
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	03/31/08	861	4
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	04/07/08	868	4
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	11/09/05	203	1
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	11/16/05	253	2
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	11/30/05	296	2
CR05P1593	SUPREME COURT RECEIPT FOR DOCUMENTS	11/30/05	297	2
CR05P1593	SUPREME COURT REMITTITUR	04/04/07	791	4
CR05P1593	TRANSCRIPT - ARRAIGNMENT 8/2/05	08/24/05	23-28	1
CR05P1593	TRANSCRIPT - FARETTA HEARING 10/06/05	10/27/05	121-153	1
CR05P1593	TRANSCRIPT - FARETTA HEARING 9/15/05	10/18/05	74-105	1
CR05P1593	TRANSCRIPT - MOTION TO CONFIRM TRIAL 10/25/05	11/21/05	283-289	2
CR05P1593	TRANSCRIPT - PRE-TRIAL MOTIONS 11/4/05	11/21/05	258-282	2
CR05P1593	TRANSCRIPT - SENTENCING 1/26/06	02/24/06	375-394	2
CR05P1593	TRANSCRIPT - STATUS HEARING 10/4/05	11/14/05	238-242	1
CR05P1593	TRANSCRIPT - STATUS HEARING 12/1/05	12/30/05	319-325	2

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Case ID	Text IN	Date	Pages	Volume
CR05P1593	TRANSCRIPT - TRIAL 11/7/05	04/20/06	642-773	3
CR05P1593	TRANSCRIPT - TRIAL 11/9/06	04/20/06	408-554	2
CR05P1593	TRANSCRIPT - TRIAL, VOLUME I 11/8/05	04/20/06	555-641	3
CR05P1593	VERDICT	11/09/05	198	1
CR05P1593	VERDICT - UNUSED (3)	11/09/05	199-201	1
CR05P1593	WAIVER OF PRELIMINARY EXAMINATION	07/26/05	3	1
CR05P1593	WRIT OF HABEAS CORPUS	08/18/05	13-16	1
CR05P1593	WRIT OF HABEAS CORPUS FOR RELIEF	08/24/05	29-31	1

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TO THE PUBLIC

# SECOND JUDICIAL DISTRICT COURT

## COUNTY OF WASHOE

Case History - CR05-1593

DEPT. D10

HON. STEVEN P. ELLIOTT

Report Date & Time

6/24/2008

1:50:25PM

Case ID: CR05-1593		Case Description: STATE VS. DAVID RODRIGUES (TN) (D10)	Initial Filing Date: 7/19/2005
Type:		Parties	
RESP	STATE OF NEVADA - STATE		
APPE	DAVID RODRIGUES - @186100		
PROP	DAVID RODRIGUES - @186100		
PLTF	STATE OF NEVADA - STATE		
DA	Rebecca Druckman, Esq. - 3714		
DEFT	DAVID RODRIGUES - @186100		
DATY	Gary Howard Hatlestad, Esq. - 1525		
Charges			
Charge No.	Charge Code	Charge Date	Charge Description
1	F650	7/26/2005	INF/AI LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS (11/7/05)
2	F650	7/26/2005	INF/AI LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS (11/7/05)
Plea Information			
Charge No.	Plea Code	Plea Date	Plea Description
1	F650	8/2/2005	PLED NOT GUILTY
2	F650	8/2/2005	PLED NOT GUILTY
Sentences			
Date	Charge No.	Charge Desc	Sentence Text
1/26/2006	1	Nevada State Prison	NDOC LIFE W/ POSSIBILITY OF PAROLE AFTER 10 YEARS; DNA ANALYSIS TEST + FEES; SPECIAL SENTENCE OF LIFETIME SUPERVISION TO COMMENCE AFT ANY PERIOD OF PROBATION, OR ANY TERM OF IMPRISONMENT, OR AFTER ANY PERIOD OF RELEASE ON PAROLE.
Release Information			
Custody Status			
8/2/2005			CUSTODY - WCJ
10/4/2005			CUSTODY - WCJ
10/6/2005			CUSTODY - WCJ
1/26/2006			CUSTODY - WCJ
Hearings			

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Report Date & Time  
6/24/2008  
1:50:25PM

Case ID: CR05-1593		Case Description: CRIMINAL	STATE VS. DAVID RODRIGUES (TN) (D10)	Initial Filing Date: 7/19/2005
Department	Event Description	Type:	Sched. Date & Time	Disposition:
1 D10	ARRAIGNMENT		8/2/2005 08:30:00	D725 8/2/2005
Extra Text:				
Department	Event Description		Sched. Date & Time	Disposition:
2 D10	FARETTA HEARING		9/15/2005 08:30:00	D445 9/15/2005 DEFT'S MOTION FOR O.R. RELEASE OR IN THE ALTERNATIVE BAIL REDUCTION DENIED
Extra Text:				
Department	Event Description		Sched. Date & Time	Disposition:
3 D10	STATUS HEARING		10/4/2005 08:30:00	D445 10/4/2005
Extra Text:				
Department	Event Description		Sched. Date & Time	Disposition:
4 D10	FARETTA HEARING		10/6/2005 08:30:00	D435 10/6/2005 COURT GRANTED DEFENDANT'S REQUEST TO REPRESENT HIMSELF. COURT APPOINTED COUNSEL JOHN MALONE AS STAND BY COUNSEL.
Extra Text:				
Department	Event Description		Sched. Date & Time	Disposition:
5 D10	MOTION TO CONFIRM TRIAL		10/25/2005 08:30:00	D425 10/25/2005 TRIAL CONFIRMED.
Extra Text:				
Department	Event Description		Sched. Date & Time	Disposition:
6 D10	PRE-TRIAL MOTIONS		11/4/2005 15:00:00	D430 11/4/2005
Extra Text:				

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Report Date & Time  
6/24/2008  
1:50:25PM

Case ID: CR05-1593 Case Description: STATE VS. DAVID RODRIGUES (TN) (D10)  
Type: CRIMINAL Initial Filing Date: 7/19/2005

Department Event Description Sched. Date & Time  
7 D10 TRIAL - JURY 11/7/2005 08:30:00

Extra Text: Disposition:  
D832 11/7/2005

Department Event Description Sched. Date & Time  
8 D10 TRIAL ONGOING 11/8/2005 10:00:00

Extra Text: Disposition:  
D832 11/8/2005

Department Event Description Sched. Date & Time  
9 D10 TRIAL ONGOING 11/9/2005 09:00:00

Extra Text: Disposition:  
D895 11/9/2005 ON COUNT I AND MISTRIAL  
DELATED ON COUNT II

Department Event Description Sched. Date & Time  
10 D10 STATUS HEARING 12/1/2005 08:30:00

Extra Text: COUNSEL FOR THE STATE TO ADVISE COURT  
WHETHER A NEW TRIAL WILL BE SET ON COUNT II Disposition:  
D455 12/1/2005 CONTINUED TO THE SENTENCING  
DATE IN COUNT I

Department Event Description Sched. Date & Time  
11 D10 SENTENCING 12/13/2005 08:30:00

Extra Text: ON COUNT I Disposition:  
D845 11/18/2005 RESET FOR 1/26/06 (BY DA'S  
OFFICE) SO THAT P&P CAN  
COMPLETE PSYCHOSEXUAL EVAL  
PRIOR TO SENTENCING

Department Event Description Sched. Date & Time  
12 D10 SENTENCING 1/26/2006 08:30:00

Extra Text: AND COUNSEL FOR STATE TO ADVISE THE COURT  
IF SHE IS PROCEEDING WITH A NEW TRIAL AS TO COUNT II Disposition:  
D765 1/26/2006

Department Event Description Sched. Date & Time  
13 D10 Request for Submission 12/18/2007 15:55:00

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Report Date & Time  
6/24/2008  
1:50:25PM

**Case ID:** CR05-1593  
**Extra Text:** ?

**Case Description:** STATE VS. DAVID RODRIGUES (TN) (D10)  
**Type:** CRIMINAL

**Initial Filing Date:** 7/19/2005

**Disposition:**  
IMG 1/14/2008 ORDER (MOTION FOR APPEAL BOND DENIED; POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS DENIED; MOTION OF INQUIRY GRANTED [COPY OF FILED-STAMPED MOTION TO SUBMIT SEND TO PETITIONER WITH COPY OF ORDER ON 1/14/08])

### Agency Cross Reference

Code	Agency Description	Case Reference I.D.
DA	District Attorney's Office	DA338146
PC	PCN number	PCN47969177
SC	Supreme Court	SCN 46073
SC	Supreme Court	SCN 46745
SC	Supreme Court	SCN 49981
SC	Supreme Court	SCN 51224
SJ	Sparks Justice's Court	SJC05850
SP	Sparks Police Department	SPD0416302

### Actions

Action Entry Date	Code	Code Description	Text
7/20/2005	1491	Court Services Report	
7/26/2005	4265	Waiver of Preliminary Exam	
7/26/2005	1800	Information	
8/2/2005	1280	** 60 Day Rule - Waived	
8/18/2005	2490	Motion ...	FOR PROPER BAIL HEARING UNDER WRIT OF HABEAS CORPUS
8/18/2005	2490	Motion ...	FOR PROPER MEDICAL TREATMENT UNDER WRIT OF HABEAS CORPUS
8/18/2005	3585	Pet Writ Habeas Corpus	
8/24/2005	4185	Transcript ...	08/02/05 - ARRAIGNMENT
8/24/2005	3585	Pet Writ Habeas Corpus	
8/30/2005	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR PROPER MEDICAL TREATMENT UNDER WRIT OF HABEAS CORPUS PARTY SUBMITTING: D. RODRIGUEZ DATE SUBMITTED: 8-30-05 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: 9-15-05 @9:00
9/6/2005	1250	Application for Setting	
9/6/2005	2130	Mtn for O.R. Release	

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Case ID: CR05-1593		Case Description	STATE VS. DAVID RODRIGUES (TN) (D10)	Initial Filing Date: 7/19/2005
		Type:	CRIMINAL	
9/14/2005	2645	Opposition to Mtn...	FOR RELEASE ON OWN RECOGNIZANCE OR FOR BAIL REDUCTION	
9/19/2005	2030	Mtn for Change of Venue		
9/19/2005	2230	Mtn Trial Trans. Public Exp		
9/28/2005	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR CHANGE OF VENUE PARTY SUBMITTING: D. RODRIGUEZ DATE SUBMITTED: 9-28-05 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: OF MOTION TO SUBMIT	
9/28/2005	3720	Proof of Service		
10/18/2005	2610	Notice ...	STATE'S NOTICE OF EXPERT WITNESS TO BE CALLED IN STATE'S CASE IN CHIEF PURSUANT TO NRS 174.234 FARETTA HEARING 9/15/05	
10/18/2005	4185	Transcript ...	TO AMEND APPEAL SENT TO COURT	
10/20/2005	2490	Motion ...	MOTION FOR TRANSCRIPT	
10/20/2005	1120	Amended ...	TO APPEAL UNDER WRIT OF HABEAS CORPUS	
10/24/2005	2490	Motion ...		
10/25/2005	2480	Mtn to Suppress...		
10/25/2005	2490	Motion ...	TO DISMISS AND TO RECONSIDER O.R.	
10/27/2005	2610	Notice ...	OF INTENT TO PRESENT CHILD HEARSAY IN STATE'S CASE IN CHIEF	
10/27/2005	2592	Notice of Witnesses	OF STATE'S WITNESSES TO BE CALLED IN STATE'S CASE IN CHIEF	
10/27/2005	4185	Transcript ...	10/06/05 - FARETTA HEARING	
11/2/2005	3795	Reply...	TO DEFENDANT'S MOTION TO DISMISS OR MOTION TO RECONSIDER O.R.	
11/2/2005	3795	Reply...	TO DEFENDANT'S MOTION TO SUPPRESS	
11/4/2005	2490	Motion ...	MOTION TO SUBMIT RE: MOTION FOR CHANGE OF VENUE	
11/4/2005	2515	Notice of Appeal Supreme Court		
11/7/2005	2490	Motion ...	MOTION TO BE ALLOWED TO APPEAL	
11/7/2005	2490	Motion ...	MOTION TO CONTINUE	
11/7/2005	2610	Notice ...	NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND THE INFORMATION	
11/7/2005	1095	Amended Information		
11/7/2005	2515	Notice of Appeal Supreme Court	NOTICE OF APPEAL U.S.C. 2254, TO THE U.S. COURT OF APPEAL FOR THE NINTH CIRCUIT AT SAN FRANCISCO - NOT PROCESSED TO NEVADA SUPREME COURT	
11/8/2005	1892	Jury Question, No Response		
11/9/2005	2515	Notice of Appeal Supreme Court		
11/9/2005	4245	Verdict(s)...		
11/9/2005	4235	Unused Verdict Form(s)...	(3)	

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Case ID: CR05-1593		Case Description: Case	STATE VS. DAVID RODRIGUES (TN) (D10)	Initial Filing Date: 7/19/2005
		Type	CRIMINAL	
<u>11/9/2005</u>	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 46073 ORDER DENYING PETITION	
<u>11/9/2005</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 46073	
<u>11/9/2005</u>	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 46073	
<u>11/9/2005</u>	1892	Jury Question, No Response		
<u>11/9/2005</u>	1885	Jury Instructions	1-28	
<u>11/10/2005</u>	1695	** Exhibit(s) ...	EXHIBITS 1 THROUGH 6 MARKED	
<u>11/14/2005</u>	1310	Case Appeal Statement		
<u>11/14/2005</u>	1365	Certificate of Transmittal		
<u>11/14/2005</u>	1350	Certificate of Clerk		
<u>11/14/2005</u>	4185	Transcript ...	10/04/05 - STATUS HEARING	
<u>11/15/2005</u>	3839	Request Agree Ord Recp Discv		
<u>11/16/2005</u>	2490	Motion ...	RE: SENTENCE	
<u>11/16/2005</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 46073	
<u>11/17/2005</u>	2175	Mtn for Reconsideration	OF MOTION FOR PROPER MEDICAL TREATMENT	
<u>11/18/2005</u>	4045	Stipulation to Continuance		
<u>11/21/2005</u>	4185	Transcript ...	11/04/05 - PRE-TRIAL MOTIONS	
<u>11/21/2005</u>	4185	Transcript ...	10/25/05 - MOTION TO CONFIRM TRIAL	
<u>11/29/2005</u>	2230	Mtn Trial Trans. Public Exp		
<u>11/30/2005</u>	3020	Ord Granting Continuance	OF SENTENCING	
<u>11/30/2005</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 46073	
<u>11/30/2005</u>	1188	Supreme Court Receipt for Doc	SURPEME COURT CASE NO. 46073	
<u>11/30/2005</u>	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 46073 ORDER DENYING RELIEF	
<u>11/30/2005</u>	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 46073	
<u>11/30/2005</u>	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 46073	
<u>12/1/2005</u>	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 46073	
<u>12/1/2005</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 46073	
<u>12/5/2005</u>	4133	Supreme Court Notice	SUPREME COURT CASE NO. 46073 NOTICE IN LIEU OF REMITTITUR	
<u>12/6/2005</u>	2490	Motion ...	FOR APPOINTMENT OF NEW PSYCHOLOGIST	
<u>12/6/2005</u>	2490	Motion ...	TO APPOINT NEW PSYCHOLOGIST	
<u>12/7/2005</u>	2490	Motion ...	TO PRODUCE WITNESS	

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Case ID: CR05-1593		Case Description: Case	STATE VS. DAVID RODRIGUES (TN) (D10)
		Type:	CRIMINAL
			Initial Filing Date: 7/19/2005
12/13/2005	3860	Request for Submission	DOCUMENT TITLE: MOTIONS PARTY SUBMITTING: D. RODRIGUEZ DATE SUBMITTED: 12-14-05 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:
12/15/2005	2295	Mtn to Dismiss Counts ...	COUNT II AND III
12/21/2005	2645	Opposition to Mtn ...	STATE'S OPPOSITION TO MOTION TO DISMISS COUNTS I & II
12/23/2005	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 46073 ORDER DENYING RELIEF
12/27/2005	2490	Motion ...	TO CORRECT STATE ERROR IN MOTION
12/30/2005	4185	Transcript ...	STATUS HEARING 12/1/05
1/4/2006	2490	Motion ...	MOTION FOR RELEASESED ON O.R.
1/11/2006	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR O.R. RELEASE PARTY SUBMITTING: D. RODRIGUEZ DATE SUBMITTED: 1-11-06 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:
1/17/2006	4500	PSI - Confidential Envelope	
1/20/2006	2842	Ord Denying Motion	FOR TRANSCRIPTS
1/20/2006	2842	Ord Denying Motion	TO DISMISS
1/20/2006	2842	Ord Denying Motion	FOR O.R. RELEASE
1/26/2006	1850	Judgment of Conviction	
1/31/2006	2490	Motion ...	MOTION FOR ARREST THE SENTENCE
1/31/2006	2515	Notice of Appeal Supreme Court	
1/31/2006	2490	Motion ...	MOTION FOR APPEAL BOND
2/1/2006	2515	Notice of Appeal Supreme Court	APPEAL #2
2/1/2006	1365	Certificate of Transmittal	
2/1/2006	1365	Certificate of Transmittal	APPEAL #2
2/1/2006	1350	Certificate of Clerk	
2/1/2006	1350	Certificate of Clerk	APPEAL #2
2/1/2006	1310	Case Appeal Statement	
2/1/2006	1310	Case Appeal Statement	APPEAL #2
2/22/2006	2490	Motion ...	TO VACATE OR SET ASIDE THE SENTENCE OF THE COURT
2/24/2006	4185	Transcript ...	01/26/06 - SENTENCING
2/27/2006	4135	Supreme Court Ord Remanding	SUPREME COURT CASE NO. 46745 ORDER OF LIMITED REMAND FOR APPOINTMENT OF COUNSEL
3/1/2006	2715	Ord Appointing Counsel	PUBLIC DEFENDER

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Case ID: CR05-1593		Case Description	STATE VS. DAVID RODRIGUES (TN) (D10)	Initial Filing Date: 7/19/2005
		Type:	CRIMINAL	
<u>3/3/2006</u>	3370	Order ...	PROHIBITING ANY FURTHER PLEADINGS IN PROPER PERSON BY THE DEFENDANT	
<u>3/17/2006</u>	2230	Mtn Trial Trans. Public Exp		
<u>3/20/2006</u>	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 46745 ORDER DENYING MOTION	
<u>3/30/2006</u>	3000	Ord Trial Transcript/Public\$		
<u>4/20/2006</u>	4185	Transcript ...	11/07/05 - TRIAL	
<u>4/20/2006</u>	4185	Transcript ...	11/08/05 - TRIAL VOLUME I	
<u>4/20/2006</u>	4185	Transcript ...	11/09/05 - TRIAL	
<u>4/27/2006</u>	3795	Reply...	STATE'S REPLY IN OPPOSITION FOR DEFENDANT'S MOTION FOR BAIL PENDING APPEAL	
<u>5/8/2006</u>	3795	Reply...	PETITIONER REPLY TO RESPONDENTS MOTION TO APPEAL BOND PENDING APPEAL	
<u>9/22/2006</u>	4125	Supreme Court Order...	SUPREME COURT CASE NO. 46745 ORDER DIRECTING CLERK OF COURT TO RETURN UNFILED, ANY AND ALL PLEADINGS FILED IN PROPER PERSON TO DEFENDANT TO DIRECT TO HIS COUNSEL FOR FILING.	
<u>3/12/2007</u>	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 46745	
<u>4/4/2007</u>	4145	Supreme Court Remittitur	SUPREME COURT CASE NO. 46745	
<u>4/4/2007</u>	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT CASE NO. 46745	
<u>4/4/2007</u>	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 46745	
<u>8/22/2007</u>	2490	Motion ...	FOR APPEAL BOND (DAVID RODRIGUES	
<u>9/6/2007</u>	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 49981 ORDER DENYING PETITION	
<u>10/5/2007</u>	4133	Supreme Court Notice	SUPREME COURT CASE NO. 49981 NOTICE IN LIEU OF REMITTITUR	
<u>11/30/2007</u>	IMG	**Entered/Imaged on Wrong Case	MOTION FOR POST CONVICTION REMEDIE UNDER WRIT OF HABEAS CORPUS	
<u>12/13/2007</u>	IMG	**Entered/Imaged on Wrong Case	DOCUMENT TITLE: ? PARTY SUBMITTING: DAVID RODRIGUES DATE SUBMITTED: 12/18/07 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:	
<u>12/18/2007</u>	IMG	**Entered/Imaged on Wrong Case	MOTION OF INQUIRY	
<u>12/18/2007</u>	IMG	**Entered/Imaged on Wrong Case		
<u>1/14/2008</u>	1315	** Case Closed	ORDER ENTERED 1/14/08 (MOTION FOR APPEAL BOND DENIED; POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS DENIED; MOTION OF INQUIRY GRANTED [COPY OF FILED-STAMPED MOTION TO SUBMIT SEND TO PETITIONER WITH COPY OF ORDER ON 1/14/08])	

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-REPORT MAY CONTAIN SEALED CASE INFORMATION-**

Report Date & Time  
6/24/2008  
1:50:25PM

Case ID:	CR05-1593	Case Description:	CRIMINAL	Initial Filing Date:	7/19/2005
<u>1/14/2008</u>	IMG	**Entered/Imaged on Wrong Case	ORDER (MOTION FOR APPEAL BOND DENIED; POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS DENIED; MOTION OF INQUIRY GRANTED [COPY OF FILED-STAMPED MOTION TO SUBMIT SEND TO PETITIONER WITH COPY OF ORDER ON 1/14/08])		
<u>4/7/2008</u>	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 51224		
<u>4/7/2008</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 51224 FOR PROPER PERSON MOTION/APPEAL BOND SENT DIRECTLY TO SUPREME COURT		
<u>5/27/2008</u>	4133	Supreme Court Notice	SUPREME COURT CASE NO. 51328 NOTICE IN LIEU OF REMITTITUR		

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NOT FOR DISTRIBUTION  
TO THE PUBLICSECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE

Case History - CR05P1593

DEPT. D10

HON. STEVEN P. ELLIOTT

Report Date &amp; Time

6/24/2008

1:51:02PM

Case ID:	CR05P1593	Case Description:	POST: DAVID RODRIGUES (D10) POST CONVICTION	Initial Filing Date:	2/9/2006
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Type: Parties

RESP PETR DA	STATE OF NEVADA - STATE DAVID RODRIGUES - @186100 Gary Howard Hatlestad, Esq. - 1525
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## Charges

Charge No.	Charge Code	Charge Date	Charge Description
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## Plea Information

Charge No.	Plea Code	Plea Date	Plea Description
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## Release Information

Custody Status

## Hearings

Department Event Description

Sched. Date &amp; Time

1

Extra Text:

Disposition:

## Agency Cross Reference

Code	Agency Description	Case Reference I.D.
SC	Supreme Court	SCN 46745
SC	Supreme Court	SCN 50935
SC	Supreme Court	SCN 51224
SC	Supreme Court	SCN 51328

## Actions

Action Entry Date	Code	Code Description	Text
2/9/2006	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 46745

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-NOT AN OFFICIAL DOCUMENT-  
-REPORT MAY CONTAIN SEALED CASE INFORMATION-

Report Date & Time  
6/24/2008  
1:51:02PM

Case ID: CR05P1593		Case Description	POST: DAVID RODRIGUES (D10)	Initial Filing Date: 2/9/2006
		Type:	POST CONVICTION	
<u>11/30/2007</u>	2490	Motion ...	MOTION FOR POST CONVICTION REMEDIE UNDER WRIT OF HABEAS CORPUS	
<u>12/13/2007</u>	3860	Request for Submission	DOCUMENT TITLE: PETITION FOR POST CONVICTION PARTY SUBMITTING: DAVID RODRIGUES DATE SUBMITTED: 12/18/07 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:	
<u>12/18/2007</u>	2490	Motion ...	MOTION OF INQUIRY	
<u>1/14/2008</u>	3370	Order ...	DENYING PETITIONER'S MOTION FOR APPEAL BOND; DENYING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); GRANTING MOTION OF INQUIRY ORDER (MOTION FOR APPEAL BOND DENIED; POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS DENIED; MOTION OF INQUIRY GRANTED [COPY OF FILED-STAMPED MOTION TO SUBMIT SEND TO PETITIONER WITH COPY OF ORDER ON 1/14/08])	
<u>1/14/2008</u>	S200	Request for Submission Complet		
<u>2/14/2008</u>	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 50935	
<u>2/14/2008</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 50935	
<u>2/26/2008</u>	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 50935 ORDER DENYING PETITION	
<u>3/4/2008</u>	2515	Notice of Appeal Supreme Court		
<u>3/4/2008</u>	1310	Case Appeal Statement		
<u>3/4/2008</u>	1365	Certificate of Transmittal		
<u>3/4/2008</u>	1350	Certificate of Clerk		
<u>3/11/2008</u>	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 51224	
<u>3/11/2008</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 50935	
<u>3/11/2008</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 51224	
<u>3/21/2008</u>	4133	Supreme Court Notice	SUPREME COURT CASE NO. 50935 NOTICE IN LIEU OF REMITTITUR SUPREME COURT CASE NO. 51224	
<u>3/31/2008</u>	1187	**Supreme Court Case No. ...		
<u>3/31/2008</u>	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 51224	
<u>4/2/2008</u>	4126	Supreme Crt Order Directing...	SUPREME COURT CASE NO. 51224 ORDER DIRECTING TRANSMISSION OF RECORD ON APPEAL (90 DAYS, CERTIFIED COPIES, ENTIRE FILE, MINUS EXHIBITS)	
<u>4/4/2008</u>	2540	Notice of Entry of Ord		
<u>4/10/2008</u>	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 50935 ORDER DENYING MOTIONS	
<u>4/29/2008</u>	2490	Motion ...	MOTION FOR LEAVE OF COURT TO AMEND WRIT OF HABEAS CORPUS (POST CONVICTION)	

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**Nevada Supreme Court Docket Sheet**

Page 1

**Docket: 51224 RODRIGUES (DAVID) VS. STATE**

DAVID RODRIGUES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 51224**

Consolidated with:

**Counsel**

David Rodrigues #89491, Carson City, NV, Appellant, in proper person  
Attorney General Catherine Cortez Masto/Carson City, Carson City, NV, as counsel for Respondent  
Washoe County District Attorney Richard A. Gammick, Reno, NV, as counsel for Respondent

**Case Information****Panel:** PANEL**Panel Members:** Unassigned**Disqualifications:****Case Status:** Open**Category:** Criminal Appeal**Type:** Proper Person/Post-Conviction/Life**Submitted:** On Record**Date Submitted:** 06/27/08**Oral Argument:****Sett. Notice Issued:****Sett. Judge:****Sett. Status:****Related Supreme Court Cases:** 46745, 51328**District Court Case Information****Case Number:** CR051593**Case Title:** STATE VS. RODRIGUES**Judicial District:** Second**Division:****County:** Washoe Co.**Sitting Judge:** Steven P. Elliott**Replaced By:****Notice of Appeal Filed:** 03/04/08

Appeal

**Judgment Appealed From Filed:** 01/14/08**Docket Entries**

<b>Date</b>	<b>Docket Entries</b>	
03/10/08	Filing Fee Waived: Criminal.	
03/10/08	Filed Certified Copy of proper person Notice of Appeal. Appeal docketed in the Supreme Court this day.	08-05929
03/27/08	Received Proper Person Motion. Motion to Disregard Notice of Appeal into the Ninth Circuit Court of Appeals.	08-07676
03/31/08	Filed Order/Transmit Record. Record due: 90 days.	08-07842
04/04/08	Received Proper Person Motion. Appeal Bond.	08-08538
06/27/08	Filed Record on Appeal (Copy). Vols. 1 through 4.	08-16501
06/27/08	Received - SEALED - Certified Copy of Pre-Sentence Investigation Report.	08-16503
06/27/08	Processing status update: Submitted for decision on record.	



Report Date & Time  
6/24/2008  
1:51:02PM

Case ID:	CR05P1593	Case Description:	POST: DAVID RODRIGUES (D10)	Initial Filing Date: 2/9/2006
4/29/2008	3862	**Criminal Submitt	POST CONVICTION	DOCUMENT TITLE: AMENDED POST-CONVICTION PARTY SUBMITTING: DAVID RODRIGUEZ DATE SUBMITTED: 4/29/08 SUBMITTED BY: LMATHEUS DATE RECEIVED JUDGE OFFICE:
4/29/2008	1110	Amended Pet ...		AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
5/5/2008	4128	Supreme Court Order Denying		SUPREME COURT CASE NO. 51328 ORDER DENYING PETITION
5/14/2008	2490	Motion ...		MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO NRS 34.750
5/20/2008	2975	Ord Response to Pet		
6/24/2008	1350	Certificate of Clerk		RECORD ON APPEAL - SENT 4 VOLUMES & 1 ENVELOPE TO SUPREME COURT
6/24/2008	1365	Certificate of Transmittal		RECORD ON APPEAL - SENT 4 VOLUMES & 1 ENVELOPE TO SUPREME COURT

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**-REPORT MAY CONTAIN SEALED CASE INFORMATION-**

96

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Motion For Leave of Court To  
Amend Writ of Habeas Corpus  
(Title of Document)

filed in case number: CROSP1593

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 24<sup>th</sup>, 2008

David Rodriguez  
(Signature)

DAVID RODRIGUEZ  
(Print Name)

\_\_\_\_\_  
(Attorney for)

~~FILED~~  
FILED

2008 JUL 21 PM 2:35

HOWARD W. CONYERS

BY C. Parsley  
DEPUTY

David Rodrigues # 89491  
N.N.C.C P.O. Box 7000  
Carson City, NV. 89702

In Pro se

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE THE COUNTY OF WASHOE

David Rodrigues	)	Case No. <u>CROP1593</u>
Petitioner,	)	
	)	Dept. No. <u>10</u>
	)	
Vs	)	
	)	
The State of Nevada	)	

" MOTION TO SUBMIT "

COME NOW TIME petitioner must motion this Court to submit on or about, "April 24th of the year 2008," Petitioner did file a timely 'motion for writ of habeas corpus' (post conviction) of the violations that was inflected upon petitioner at pre-trial, trial and sentencing as well.

The United States District Court at Reno, Nevada; issued an order on the 31st day of July 2007, stating that 'two (2)' of the issues that was presented to the United States District Court must be presented to the sentencing Court on post conviction remedy before the U.S. District <sup>COURT, DR</sup> can render a ruling on 'two (2)' of the issues of violation out of the four(4) violations that was presented to the U.S. District Court, to give the sentencing Court a chance to correct the error that was inflected upon petitioner the trial court; "this the petitioner has done," as the filing and record of this case shall reflect.

98

1           The motion filed by the Washoe County District Attorney  
2 was in fact filed untimely, therefore it is the Washoe County  
3 District Attorney that filed his response untimely.

4           This Court issued an order for the State to respond to  
5 petitioners writ of habeas corpus in fortyfive 45 days, on May  
6 20th, 2008, but the Washoe County District Attorney filed his  
7 response on July 7th, 2008, fortynine (49 days after the order by  
8 this Court was issued). therefore, it is the Washoe County  
9 District Attbrneyof whom did not respond timely, therefore,  
10 based on all ~~the~~ <sup>of</sup> the facts of violations of this case, that have  
11 been presented to this Court of petitioners Constitutional Rights  
12 of the United States Constitution this Court is left with only  
13 one recourse of action and that is to issue and 'Order To Dismiss  
14 count one, and count 2, and the petitioner to be released from  
15 prison, and this case, records be expunged'.

16  
17           Respectfully Submitted, on this 17 day of July  
18 2008.

19  
20           x David Rodriguez  
21           David Rodriguez # 89491  
22           N.N.C.C P.O. Box 7000  
23           Carson City, NV. 89702  
24  
25  
26  
27  
28

99  
VERIFICATION OF SERVICE

1  
2 I, David Rodrigues; the petitioner in the above-  
3 entitled cause of action on this 17 day of July 2008,  
4 did serve upon the the following persons listed below, a true and  
5 correct copy of the "~~Motion To Dismiss~~".

- 6 1. Attorney General for the State of Nevada  
7 Heroes Memorial Building  
8 Capitol Complex  
9 Carson City, NV.89710  
10  
11 2. The Washoe County District Attorney  
12 75 Court Street  
13 Reno, Nevada.89501

14 I declare under penalty of perjury that the foregong is  
15 true and correct to the best of my knowledge and understanding.

16 Executed on this 17 day of July 2008 at  
17 Carson City, Nevada. 89702  
18

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
X David Rodrigues  
David Rodrigues # 89891  
N.N.C.C. P.O. Box 7000  
Carson City, Nev.89702

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION**

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

*Writ of Habeas Corpus*

(Title of Document)

filed in case number: *CRO P 1593*



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-OR-



For the administration of a public program

-OR-



For an application for a federal or state grant

-OR-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: *7-17-08*

*David Rodriguez*  
(Signature)

*DAVID RODRIGUES*  
(Print Name)

*Pro Sec*  
(Attorney for)

1 CODE #3860  
2 RICHARD A. GAMMICK  
3 #001510  
4 P. O. Box 30083  
5 Reno, Nevada 89520-3083  
6 (775)328-3200  
7 Attorney for Respondent

*101*

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
9  
10 IN AND FOR THE COUNTY OF WASHOE

11 \* \* \*

12 DAVID RODRIGUES,

13 Petitioner,

14 v.

Case No. CR05P1593

15 THE STATE OF NEVADA,

Dept. No. 10

16 Respondent.

17 REQUEST FOR SUBMISSION

18 It is requested that the Motion to Dismiss Petition for Writ of Habeas Corpus (Post-  
19 Conviction), filed on July 7, 2008, be submitted to the court for decision.

20 The undersigned attorney certifies that a copy of this request has been mailed to all  
21 parties of record.

22 AFFIRMATION PURSUANT TO NRS 239B.030

23 The undersigned does hereby affirm that the preceding document does not contain the  
24 social security number of any person.

25 DATED: July *23*, 2008.

26 RICHARD A. GAMMICK  
District Attorney

By *Joseph R. Plater*  
JOSEPH R. PLATER  
Appellate Deputy

102

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

David Rodrigues #89491  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

DATED: July 23, 2008.

David Rodrigues